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WHEN: Tuesday, March 22, 2011
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Washington, DC 20002

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2011–7 of March 7, 2011

Unexpected Urgent Refugee and Migration Needs Related to Côte d'Ivoire

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (the "Act"), as amended, (22 U.S.C. 2601), I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $12.6 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and nongovernmental organizations and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to humanitarian needs resulting from the recent unrest in Côte d'Ivoire.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 7, 2011

[FR Doc. 2011–6257
Filed 3–15–11; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2011–8 of March 7, 2011

Unexpected Urgent Refugee and Migration Needs Related to Libya

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (the "Act"), as amended, (22 U.S.C. 2601), I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $15 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and nongovernmental organizations and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to the humanitarian crisis resulting from the violence in Libya.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 7, 2011

[FR Doc. 2011–6263
Filed 3–15–11; 8:45 am]
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Presidential Documents

Memorandum of March 11, 2011

Government Reform for Competitiveness and Innovation

Memorandum for the Heads of Executive Departments and Agencies

As I outlined in my State of the Union address to the Congress on January 25, 2011, winning the future in the global economy will require reducing our deficit while investing in areas critical to long-term economic growth and competitiveness such as education, innovation, and infrastructure. By out-educating, out-innovating, and out-building our competitors, we will enable our Nation to grow, create jobs, and thrive in the years ahead.

At the same time, we cannot win the future with a government built for the past. We live and do business in the information age, but the organization of the Federal Government has not kept pace. Government agencies have grown without overall strategic planning and duplicative programs have sprung up, making it harder for each to reach its goals. Already, my Administration has taken on this waste and duplication. My current budget proposes more than 200 terminations, reductions, and savings in agency programs totaling approximately $30 billion in fiscal year 2012. And in areas as varied as surface transportation to job training, public health, and education, I have proposed to consolidate scores of programs into more focused, effective, and streamlined initiatives.

But we must go further. Winning the future will take a government that judiciously allocates scarce government resources to maximize its efficiency and effectiveness so that it can best support American competitiveness and innovation. Now is the time to act to consolidate and reorganize the executive branch of the Federal Government in a way that best serves this goal.

By this memorandum, I assign our Nation's first Chief Performance Officer, who also serves as the Deputy Director for Management of the Office of Management and Budget (the "Chief Performance Officer"), the responsibility of leading the effort to create a plan for the restructuring and streamlining of the executive branch of the Federal Government. The first focus of this effort shall be on the executive departments and agencies and the functions that support one of our most important priorities—increasing trade, exports, and our overall competitiveness ("trade and competitiveness").

Accordingly, I direct the following:

(1) The Chief Performance Officer shall establish a Government Reform for Competitiveness and Innovation Initiative, led by an Executive Director, to conduct a comprehensive review of the Federal agencies and programs involved in trade and competitiveness, including analyzing their scope and effectiveness, areas of overlap and duplication, unmet needs, and possible cost savings.

(2) As part of this review, the Chief Performance Officer and Executive Director shall confer broadly with the heads and staff of executive departments and agencies, including the offices and agencies within the Executive Office of the President (collectively, the "agencies"). They should also consult broadly with external stakeholders, including Members of Congress, business leaders, unions, nongovernmental organizations, and government reform experts, to hear their individual and independent perspectives on what we are doing well and where we could improve our effectiveness and efficiency.

(3) Within 90 days from the date of this memorandum, the Chief Performance Officer shall submit recommendations to me for presidential and, ultimately, congressional action to restructure and streamline Federal Government programs focused on trade and competitiveness, based on the following principles:

(a) the functions of the executive branch of the Federal Government involved in trade and competitiveness should be organized so that the Federal Government can most efficiently and effectively facilitate the competitiveness of American businesses, large and small, and American workers in the changing global economy;

(b) the responsibilities, authorities, programs, and requirements of agencies should be transparent, understandable, and easily accessible to the American public; and

(c) agencies and programs should be organized to reduce inefficiencies and overlapping responsibilities or functions, maximize return on taxpayer dollars, and best serve the American public.

(4) Agencies shall provide, consistent with law, information and assistance requested by the Chief Performance Officer and Executive Director to inform their work as directed by this memorandum.

(5) Agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

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

(7) The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 11, 2011

[FR Doc. 2011–6298
Filed 3–15–11; 8:45 am]
Billing code 3110–01–P

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 35

[Doc. No. AMS–FV–10–0091; FV11–35–1 FR]

Regulations Issued Under the Export Grape and Plum Act; Revision to the Minimum Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the requirements under the Export Grape and Plum Act. This rule changes the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule also updates the list of European countries defined in the regulation and removes the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety. This action was recommended by the California Grape and Tree Fruit League (League).

DATES: *Effective Date:* March 17, 2011.

FOR FURTHER INFORMATION CONTACT: Dawana J. Clark, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (301) 734–5243, *Fax:* (301) 734–5275, or *E-mail: Dawana.Clark@ams.usda.gov* or *Kenneth.Johnson@ams.usda.gov.*

Small businesses may request information on complying with this regulation 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) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under authority of the Export Grape and Plum Act, as amended (7 U.S.C. 591–599), hereinafter referred to as the "Act." The Act promotes the foreign trade of U.S. grown grapes and plums by authorizing the implementation of regulations with minimum grade, quality, container, container marking, and inspection requirements.

This final rule amends "Regulations Issued Under Authority of the Export Grape and Plum Act" (regulations) (7 CFR part 35). The regulated entities are shippers, exporters, and carriers of table grapes for export.

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

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

Section 35.11 of the regulations establishes minimum size and quality requirements for export shipments of any variety of *vinifera* species table grapes. Currently, such grapes shipped to Japan, Europe, or Greenland must meet a minimum grade of U.S. Fancy Table as specified in the U.S. Standards for Grades of Table Grapes (U.S. Standards) (7 CFR part 51, §§ 51.880–51.992), with the additional requirement that bunches must each weigh at least one-half pound. Section 35.11 also defines the countries in Europe for which the export regulation applies. Finally, § 35.11 provides an additional 2 percent tolerance for sealed berry cracks on both the Ribier and Exotic varieties, which must otherwise meet the minimum requirements for the U.S. No. 1 Table grade as contained in the U.S. Standards.

This final rule revises § 35.11(a) of the order's administrative rules and regulations by changing the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This final rule further revises § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule revises § 35.11(b) by removing the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety.

The Board of Directors of the League, which represents a substantial portion of the fresh table grape industry, unanimously recommended that the one-half pound bunch size minimum requirement be removed from § 35.11(a) of the regulations. This makes the minimum bunch size requirement one-quarter pound as defined in the U.S. Standards for the U.S. Fancy Table grade.

There has been an increasing retail demand for table grapes packaged in plastic clamshells, particularly for export markets. One of the most popular package sizes is the 500 gram (approximately 1.1 pounds) clamshell. However, shippers find it difficult to fit two larger (minimum one-half pound) grape bunches into the 500 gram clamshell. This change allows shippers to use smaller (minimum one-quarter pound) bunches to fill the smaller clamshell packages. This change offers shippers greater flexibility in packaging and allows them to pack a greater portion of the crop into the clamshell packages that are popular in the marketplace. The League believes this change positions shippers and exporters to better meet market demand while maintaining pack quality.

The League further recommended that the list of countries used to define the term *Europe* in § 35.11(a) of the regulations be updated to include the current names of European countries for which the export regulations apply. Specifically, the names "Czechoslovakia," "East Germany," "West Germany," and "Yugoslavia" are deleted, and the following countries are added to the remaining list: Bosnia, Croatia, Czech Republic, Germany, Herzegovina, Macedonia, Montenegro, Serbia, and Slovenia. Such action clarifies the European destinations for which the export regulations are applicable.

Finally, the League recommended that § 35.11(b) be revised by removing the additional 2 percent tolerance for sealed berry cracks on Exotic variety grapes. This variety is no longer produced on a commercial basis, and the additional tolerance is no longer warranted.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly,

AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Because California table grapes represent the bulk of U.S. production, it is assumed that an analysis of the effects of this final rule upon members of the California table grape industry is representative of the entire U.S. industry. According to industry statistics, at least 98 percent of U.S. table grapes are produced in California. Approximately 35 percent of the U.S. table grape crop is exported. There are approximately 550 table grape producers in California, and approximately 75 table grape shippers. The number of table grape exporters and carriers is unknown.

Small agricultural producers are defined as those having annual receipts of less than $750,000; and small agricultural service firms, including shippers, exporters, and carriers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. USDA's National Agricultural Statistics Service reports that California table grape production for 2009 was 755,000 tons, valued at $510 per ton or $385,050,000. Average receipts for California's 550 producers would thus be approximately $700,090, which is lower than the SBA threshold of $750,000 for small producers. According to USDA's Foreign Agricultural Service, 335,300 tons of fresh grapes, valued at $588,461,000, were exported from the U.S. in 2009. Assuming that 98 percent of exported grapes were produced in California, average 2009 receipts for California's 75 shippers would have been around $7,700,000, which is higher than the SBA threshold of $7,000,000 for small agricultural firms.

Based upon the preceding calculations, it could be concluded that the majority of California (and therefore, U.S.) table grape producers could be classified as small entities, and that the majority of shippers could be classified as large entities, according to SBA definitions. However, the League believes that a small number of shippers ship a majority of the volume, and that the majority of California table grape shippers could be classified as small entities under SBA's standards. No information regarding the number or size of U.S. table grape exporters and carriers is available.

This final rule is issued under authority of the Export Grape and Plum Act, as amended (7 U.S.C. 591–599). This rule amends the "Regulations Issued Under Authority of the Export Grape and Plum Act" (7 CFR part 35) by changing the minimum bunch weight requirement specified in § 35.11(a) for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule further revises § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule revises § 35.11(b) by removing the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety.

The League met on June 24, 2010, and unanimously recommended revising the minimum size requirements to allow a one-quarter pound minimum bunch size, instead of the one-half pound minimum bunch size currently specified in the regulations. The one-quarter pound minimum bunch size is specified in the U.S. Standards for U.S. Fancy Table grade grapes, which are incorporated by reference in the regulations. The League also recommended updating the list of European countries defined in the regulation to reflect the currently recognized names of those countries. Finally, the League recommended removing the additional 2 percent tolerance for sealed berry cracks in the Exotic grape variety. This variety is no longer in commercial production, and an additional tolerance for defects in that variety is no longer warranted.

The League believes that adhering to the smaller bunch size requirement currently specified in the U.S. Standards for U.S. Fancy Table grade will have a beneficial impact on the entire industry. It is difficult to fill the smaller clamshells with the larger bunches of grapes, thus limiting the number of clamshells that can be shipped. It is easier to fill the clamshells with smaller bunches, which fit into the packages better. Therefore, the League believes that the industry will be able to ship a greater number of 500 gram clamshells to meet market demand. Although they did not identify any potential additional costs to making this change, the League believes that the impact of any additional costs will be outweighed by the advantage of presenting U.S. table grapes in packages most desirable in the retail market. The benefits of this action will be a gain in the overall amount of product sold and an increase in returns to producers, shippers, exporters, and carriers, regardless of size.

Updating the list of European countries for which the export regulations apply and removing the additional 2 percent tolerance for sealed berry cracks on the obsolete Exotic variety merely update the regulations to reflect current terminology and industry trends. These changes are not expected to have any economic impact on large or small entities.

The League recommended that these changes be effective for the 2011 harvesting season, which begins approximately May 1, 2011. These changes will remain in effect on a continuing basis, beginning with the 2011 season. These actions allow for more practical and efficient packaging while maintaining the overall quality of exported table grapes. These recommended actions are intended to allow shippers and exporters to be more competitive in the marketplace, thereby selling more product.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large table grape shippers, exporters, or carriers. As with all Federal regulatory marketing programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on December 13, 2010 (75 FR 77561). Copies of the rule were sent to the League, and the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 12, 2011, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period. The commenter, representing a large grower of California table grapes, opposed the proposed change. The commenter disagreed with the analysis in the proposed rule that the change would maintain the overall quality of exported table grapes. The commenter claimed the overall quality would be diminished by this change, stating that smaller bunches mean lower quality, and reduced weight per bunch results in a more rapid postharvest deterioration of grapes.

The export grape regulations issued under the Act are tied to a U.S. Fancy Table grade as specified in the U.S. Standards. The size requirement for a

U.S. Fancy Table grade is a bunch size of not less than one-quarter pound. In terms of international trade, the Codex standard and the United Nations Economic Commission for Europe standard for table grapes both set minimum bunch size at 75 grams. All three standards are established through extensive research and are used to define and measure quality.

Considering these three standards of domestic and international quality, this relaxation would continue to meet U.S. Standards and exceed international standards (one-quarter pound equals 113.4 grams). Additionally, size is just one element of table grape quality, with overall quality measured by numerous characteristics. Under this change, all other characteristics such as maturity, firmness, shatter, development, appearance, damage, and decay, remain the same. Consequently, overall quality should remain largely unaffected by this change.

Further, a review of table grape research did not identify any information that would indicate this reduction in bunch size would affect overall quality.

In terms of postharvest deterioration, research suggests that deterioration is most impacted by the handling and treatment of the grape prior to shipment. The factors most frequently referred to in the research focusing on postharvest deterioration were water loss, temperature, and proper fumigation.

In addition, information provided by the University of California [1] regarding the postharvest movement of table grapes indicates that overpacking containers can have a detrimental effect on quality, resulting in increased bruising and damage to the fruit. The change to allow a smaller bunch size was recommended because it can be difficult to fit one-half pound bunches into the smaller clamshells. One-quarter pound bunches fit this particular packaging better. As such, for this particular package, the reduction in bunch size may actually improve overall postharvest quality and reduce deterioration during shipment.

The commenter also suggested this change be postponed to allow buyers and sellers more time to consider its ramifications. However, USDA believes the table grape industry is familiar with this issue and the merits of the one-quarter pound bunch size, and sees no compelling reason to postpone this action.

[1] Kadar, A.A., Postharvest Technology of Horticultural Crops, University of California, Agriculture and Natural Resources, 2002.

As noted earlier, California produces approximately 98 percent of United States table grapes. California table grape shippers already pack to a one-quarter pound bunch size for domestic shipments, so they are familiar with this bunch size. Also, this change was unanimously recommended by the Board of Directors of the League, which represents a substantial portion of the fresh table grape industry.

Further, under the Federal marketing order for California table grapes (order), a regulatory change to facilitate the packing of small clamshells was also recently discussed and implemented. The change was recommended because shippers were having difficulty packing smaller clamshells, even at the one-quarter pound bunch size. To address this, the minimum bunch size for clamshells of 2 pounds or less was relaxed on a one-year trial basis (74 FR 38323; August 3, 2009), and then made permanent under the order following the success of the trial period (75 FR 34343; June 17, 2010). With implementation of this change, 20 percent of the total weight in smaller clamshell packages may consist of grape clusters that weigh less than one-quarter pound and have at least five berries each.

The commenter also stated that if the change is permitted, the rule should require container labels to warn buyers that the package contains bunches weighing less than one-half pound. USDA finds nothing in the proposed change that would warrant any sort of warning label.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including information and recommendations submitted by the League and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this change needs to be in place prior to the 2011 harvesting season, which begins approximately May 1, 2011. Further, shippers are aware of this rule, which was recommended by the League on June 24, 2010. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 35

Administrative practice and procedures, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 35 is amended as follows:

PART 35—Export Grapes and Plums

■ 1. The authority citation for 7 CFR part 35 continues to read as follows:

Authority: 48 Stat. 734; 7 U.S.C. 591–599.

■ 2. In § 35.11, paragraphs (a) and (b) are revised to read as follows:

35.11 Minimum requirements.

* * * * *

(a) Any such variety for export to destinations in Japan, Europe (defined to mean the following countries: Albania, Austria, Belgium, Bosnia, Bulgaria, Croatia, Czech Republic, Denmark, England, Finland, France, Germany, Greece, Herzegovina, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Macedonia, Montenegro, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovenia, Spain, Sweden, Switzerland, Wales), or Greenland shall meet each applicable minimum requirement of the U.S. Fancy Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title). The Black Corinth variety shall be exempt from bunch and berry size requirements.

(b) Any such variety for export to any foreign destination, other than destinations in Japan, Europe, Greenland, Canada, or Mexico, shall meet each applicable minimum requirement of the U.S. No. 1 Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title), except that an additional 2 percent tolerance for sealed berry cracks on the Ribier variety is allowed. The Black Corinth variety shall be exempt from bunch and berry size requirements.

* * * * *

Dated: March 11, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–6130 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Document Number AMS–FV–07–0091; FV–07–706–FR]

RIN 0581–AC78

U.S. Honey Producer Research, Promotion, and Consumer Information Order; Termination of Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Agriculture Marketing Service (AMS) is removing from the Code of Federal Regulations (CFR) referendum procedures for the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed Order). The Proposed Order was not approved during referendum and thus was not implemented. Therefore, referendum procedures for this Proposed Order are no longer necessary and the part is removed in its entirety.

DATES: *Effective Date:* The rule will be effective on May 16, 2011, without further action, unless adverse comments or written notice of intent to submit adverse comments are received on or before April 15, 2011. If adverse comments or written notice of intent to submit adverse comments are received, AMS will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: You may submit comments or written notice of intent to submit adverse comments on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244; *fax:* (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov.* All comments submitted in response to this 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: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Ave, SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888)720–9917 (toll free), *Fax:* (202) 205–2800 or e-mail *kimberly.coy@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Proposed Order was authorized by the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425). The Proposed Order was published in the **Federal Register** on July 14, 2009 [74 FR 34182] with request for comments, and then again on April 12, 2010 [75 FR 18430] to announce a referendum. The Department conducted an initial referendum from May 17, 2010 through June 4, 2010 to ascertain whether the persons to be covered by and assessed under the Proposed Order favored the Order prior to it going into effect. To be eligible to vote, producers must have produced 100,000 or more pounds of honey from January 1, 2008 through December 31, 2008. The Proposed Order would have been implemented if approved by a majority of the producers voting in the referendum, which also represented a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. In the referendum, 41 percent of those who voted—representing 52 percent of the voted volume of U.S. honey—favored implementation of the Order. Therefore, the Proposed Order failed by vote. Accordingly based upon the referendum results, a rule withdrawing the proposed rule and referendum order was published in the **Federal Register** on November 9, 2010 [75 FR 68728]. However, final referendum procedures were published in the **Federal Register** on April 12, 2010, [75 FR 18396] and added to 7 CFR part 1245 in Subpart B, along with reserved Subpart A. This action is needed to remove 7 CFR part 1245 from the CFR since the program was never implemented. This document provides for the removal of 7 CFR 1245 in its entirety.

Direct Final Action

The Agricultural Marketing Service (AMS) is removing from the Code of Federal Regulations (CFR), 7 CFR part 1245, U.S. Honey Producer Research, Promotion and Consumer Information Order (Proposed Order) in its entirety.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule in effect because the initial referendum conducted by AMS for the Proposed Order was not approved during referendum and thus was not implemented. Further, AMS views this action as noncontroversial and anticipates no adverse public comment. This rule will be effective, as published in this document, May 16, 2011, without further action, unless AMS receives adverse comments or written notice of intent to submit adverse comments on or before April 15, 2011. Adverse comments are considered to be those comments that suggest the rule should not be adopted or suggest the rule should be changed.

If AMS receives adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. AMS will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Department is required to examine the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $7.0 million or less. Using these criteria, under the Proposed Order, most producers and handlers would be considered small businesses. Pursuant to the requirements set forth in the RFA, it has been determined that this rule will not have an adverse economic impact on entities small or large. The Proposed Order was never implemented. No additional cost or burden is expected to result from this action.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements being terminated were

approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581—NEW. Termination of the reporting requirements will reduce the reporting burden on producers by about 11 hours.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Executive Order 12988

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

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

Under Section 519 of the Act, a person subject to an order may file a petition with USDA 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, USDA 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 be 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 entry of USDA's final ruling.

List of Subjects in 7 CFR Part 1245

Administrative practice and procedure, Advertising, Consumer Education, U.S. Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

Accordingly, under the authority of 7 U.S.C. 7411–7425; 7 CFR part 1245 is removed.

PART 1245—[Removed]

Dated: March 9, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–6043 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0080]

Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Grassy Sound Channel Bridge across the Grassy Sound Channel, mile 1.0, at Middle Township, NJ. The deviation is necessary to facilitate the cleaning and painting of the structure. This deviation allows the bridge to remain closed for the entirety of the deviation period.

DATES: This deviation is effective from 5 a.m. on March 1, 2011 to 5 p.m. on April 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0080 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0080 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. Terrance A. Knowles, Environmental Protection Specialist, Fifth District; Coast Guard; telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Cape May County Bridge Commission (CMCBC), who owns and operates this bascule drawbridge, has requested a temporary deviation from the current operating schedule to facilitate the cleaning and painting of the bridge structure. Under the regular operating schedule required by 33 CFR 117.721, the draw of the bridge shall open on signal from 6 a.m. to 8 p.m., from May 15 through September 30. From 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year, the draw need not open for vessels. If the fourth Sunday falls on a religious holiday, the draw need not open from 9:15 a.m. to 2:30 p.m. on the third Sunday of March of every year. Two hours advance notice is required for all other openings by calling (609) 368–4591.

The Grassy Sound Channel Bridge, mile 1.0, in Middle Township NJ, has a vertical clearance in the closed position of 15 feet above mean high water. Vessels that can transit under the bridge without an opening may do so at any time. Under this temporary deviation, CMCBC will maintain the bridge in the closed position to vessels beginning at 5 a.m. on March 1, 2011 through 5 p.m. on April 30, 2011.

Historically, in the last two years, the bridge has not opened during the months of March and April.

The Coast Guard will inform users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The drawbridge will open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Vessels have an alternate route by transiting through the nearby Great Channel drawbridge, a detour of approximately two miles.

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

Dated: March 3, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–6072 Filed 3–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0117]

RIN 1625–AA00

Safety Zone; Todd Pacific Shipyards Vessel Roll-Out, West Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the West Duwamish Waterway in Seattle, Washington for a vessel roll-out at Todd Pacific Shipyards. The safety zone is necessary to ensure the safety of the maritime public as well as the workers involved in the roll-out and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or a Designated Representative.

DATES: This rule is effective on April 1, 2011 from 12 p.m. until 7 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0117 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0117 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Anthony P. LaBoy, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; telephone 206–217–6323, e-mail *SecotPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to the public interest since the event requiring the establishment of this safety zone would be over before a comment period would end and a Final Rule could be published. In addition, given the dangers involved with a large slow moving dry dock maneuvering close to the shore, a delay in enacting this safety zone would be contrary to the public interest.

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**, as the event requiring the establishment of this safety zone would be over before the temporary final rule could be published. Due to the dangers involved with a large slow moving dry dock maneuvering close to the shore, delaying the effective date of this rule would be contrary to the public interest.

Background and Purpose

Todd Pacific Shipyards is conducting a vessel roll-out in the West Duwamish Waterway in Seattle, Washington on April 1, 2011. Due to the dangers involved with a large slow moving dry dock that will be maneuvering close to the shore, the Coast Guard is establishing a temporary safety zone to ensure the safety of the workers involved as well as the maritime public.

Discussion of Rule

The safety zone is being created to ensure the public's safety during a vessel roll out that will take place on April 1, 2011 in the waters of the West Duwamish Waterway. The safety zone created by this rule encompasses all waters of the West Duwamish Waterway in Seattle, Washington within the area created by connecting the following points: 47°35″ 04″ N, 122°21″ 30″ W thence westerly to 47°35″ 04″ N, 122°21″ 50″ W thence northerly to 47°35″ 19″ N, 122°21″ 50″ W thence easterly to 47°35″ 19″ N, 122°21″ 30″ W thence southerly to 47°35″ 04″ N, 122°21″ 30″ W. All persons and vessels will be prohibited from entering or remaining in the safety zone. The safety zone will be effective on April 1, 2011 from 12 p.m. to 7 p.m. unless cancelled sooner by the Captain of the Port or his Designated Representative.

The safety zone will be enforced by the U.S. Coast Guard. The Captain of the Port may also be assisted in the enforcement of this safety zone by other Federal, State, or local agencies.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding based on the fact that the safety zone is enforced for only seven hours on one day, and maritime traffic may be able to transit through the safety zone with permission of the Captain of the Port or his Designated Representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the safety zone created by this rule. This rule will not have a significant economic impact on a substantial number of small entities, although the safety zone will apply to the entire width of the waterway, the zone is enforced for only seven hours on one day, and vessel traffic will be allowed to pass through the safety zone with the permission of the Captain of the Port or his Designated Representative.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–

888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 165.T13–176 is added to read as follows:

§ 165.T13–176 Safety Zone; Todd Pacific Shipyards Vessel Roll-Out, West Duwamish Waterway, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of the West Duwamish Waterway in Seattle, WA encompassed within the area created by connecting the following points: 47°35′04″ N, 122°21′30″ W thence westerly to 47°35′04″ N, 122°21′50″ W thence northerly to 47°35′19″ N, 122°21′50″ W thence easterly to 47°35′19″ N, 122°21′30″ W thence southerly to 47°35′04″ N, 122°21′30″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the Captain of the Port or his Designated Representative. *See* 33 CFR part 165, Subpart C, for additional information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting Vessel Traffic Service Puget Sound on VHF channel 14, or the Sector Puget Sound Joint Harbor Operations Center at (206) 217–6001.

(c) *Enforcement Period.* The safety zone created in this rule is enforced from 12 p.m. to 7 p.m. on April 1, 2011 unless cancelled sooner by the Captain of the Port.

Dated: March 1, 2011.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–6070 Filed 3–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 76

RIN 2900–AN43

U.S. Paralympics Monthly Assistance Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes Department of Veterans Affairs (VA) regulations regarding the payment of a monthly assistance allowance to veterans training to make the United States Paralympics team, as authorized by section 703 of the Veterans' Benefits Improvement Act of 2008. The rule requires submission of an application to establish eligibility for the allowance and certification by the United States Paralympics. VA will pay the allowance to a veteran with a service-connected or nonservice-connected disability if the veteran is competing for a slot on or selected for the United States Paralympics team or is residing at a United States Paralympics training center.

DATES: *Effective Date:* This final rule is effective April 15, 2011. The Director of the Office of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Matt Bristol, Office of National Veterans Sports Programs and Special Events (002C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461–7447. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 3, 2010, VA published a proposed rule in the **Federal Register** (75 FR 54069). We proposed to add a new 38 CFR part 76 to implement a monthly assistance allowance for certain disabled veterans who participate in programs or events sanctioned by the United States Paralympics (USP) or who reside at a USP training center. Congress authorized this allowance in 38 U.S.C. 322. As explained in the proposed rule, under section 322, VA may provide an allowance to a disabled veteran who is: (1) Invited by the USP to compete for a slot on, or selected for, the USP team, for any month or part of any month in which the veteran is training or competing in any event sponsored by the USP or the International Paralympic Committee (IPC); or (2) residing at a USP training center in connection with any paralympic training or competition. We proposed to define the term "disability" for the purposes of part 76 to mean "a service-connected or nonservice-connected disability, which meets the criteria prescribed by the IPC Classification Code and International Standards, November 2007 edition, available at *http://www.paralympic.org/export/sites/default/IPC/IPC_Handbook/Section_2/2002_2_Classification_Code6.pdf,* and qualifies the veteran for participation in a sport sanctioned by the [USP]." We proposed to incorporate by reference the IPC's code and standards. We explained that this document would be made available to the public via a VA-controlled source for purposes of the final rule, and that the definition might be changed accordingly. The document is now found at *http://www4.va.gov/about_va/va_notices.asp.* The Director of the Office of the Federal Register has approved the incorporation by reference and we have modified § 76.1 accordingly.

We also explained in the preamble to the proposed rule that we plan to make payments in full first to veterans with service-connected disabilities, and to allow retroactive payment for paralympic training, competition, or residence that occurred on or after October 1, 2009, if an application and appropriate certification are submitted to VA within 1 year of the effective date of this final rule. Further, we proposed to base the amount of the allowance payable to individuals on the rate paid as a subsistence allowance for a full-time institutional program under chapter 31 of title 38, United States Code, (*See* 38 U.S.C. 3108(b)), and to pay an individual for each day of qualified training, competition, or residence at 1/30 of the monthly rate, or on a monthly basis for a continuous month of qualified training, competition, or residence.

Interested persons were invited to submit written comments on the proposed rule on or before October 4, 2010. We received one comment from an individual. This commenter asserted that VA should not proceed with the rulemaking because it would cause negative effects. The commenter expressed concern that the rule will cause veterans to ignore real priorities, such as raising families, paying bills, and being good citizens. In addition, this commenter suggested that veterans are not deterred from competing due to financial limitations, but are instead simply setting their own priorities when deciding not to compete. The commenter would prefer that VA "urge veterans to seek mentors to hone their * * * priorities to achieve more for themselves and their families" instead of providing financial support. We do not agree with the commenter that the monthly assistance allowance will cause veterans to ignore other priorities, whether financial or otherwise. We are not aware of any evidence indicating that participation in paralympic sports causes veterans or other paralympic athletes to become poor citizens, and the commenter does not supply any such evidence. Rather than causing veterans to shirk responsibilities, we believe the monthly assistance allowance will provide sufficient funding to allow veterans to participate in paralympic training or competition while continuing to attend to their responsibilities. We also believe that participation in paralympic training or competition allows for adoption of an active, healthy lifestyle, and accordingly enhances veterans' rehabilitation following injury or disease.

To the extent the commenter objects to the payment of money to veterans for this purpose, we note that Congress has already authorized this benefit under 38 U.S.C. 322(d). To the extent the commenter believes mentorship programs are a more effective way to help veterans, we note that such programs would not be inconsistent with this rule. Therefore, we decline to withdraw or modify the rule based on this comment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and Tribal governments or on the private sector.

Paperwork Reduction Act

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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.

This document contains two provisions constituting a collection of information at 38 CFR 76.3(a) and (b) under the Paperwork Reduction Act (44 U.S.C. 3501–3521). In addition, we correct a clerical error in estimating the total annual reporting burden. In the proposed rule, we estimated a burden of

2,000 reporting hours for each collection of information. The correct reporting hours burden is 33 for each collection of information, not 2,000, which is the number of minutes. The Office of Management and Budget (OMB) has approved the information collection requirements for § 76.3(a) and (b) and has assigned OMB control number 2900–0760.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would primarily affect only individuals and would impose only a minor certification requirement upon the United States Paralympics. Therefore, this amendment is exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

This final rule will not affect VA programs listed in the Catalog of Federal Domestic Assistance.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 9, 2011, for publication.

List of Subjects in 38 CFR Part 76

Certification, Day care, Disabled, Eligibility, Incorporation by reference, Individuals with disabilities, Monthly assistance allowance, Over payment, Oversight, Physically challenged athletes, Service-connected disabilities, Sport event, Travel and transportation expenses, U.S. Paralympics training center, Veterans.

Dated: March 10, 2011.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble of this final rule and of the notice of proposed rulemaking, VA amends 38 CFR chapter I to add a new part 76 to read as follows:

PART 76—MONTHLY ASSISTANCE ALLOWANCE FOR VETERANS IN CONNECTION WITH THE UNITED STATES PARALYMPICS

Sec.
76.1 Definitions.
76.2 Assistance allowance.
76.3 Application and certification.
76.4 Amount of allowance.

Authority: 38 U.S.C. 501, 322(d), and as stated in specific sections.

§ 76.1 Definitions.

For purposes of part 76, the following definitions apply:

Disability means a service-connected or nonservice-connected disability which meets the criteria prescribed by the International Paralympic Committee (IPC) Classification Code and International Standards, November 2007 edition, available at *http://www.paralympic.org/export/sites/default/IPC/IPC_Handbook/Section_2/2008_2_Classification_Code6.pdf,* and qualifies the veteran for participation in a sport sanctioned by the United States Paralympics. The IPC standards are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, VA must publish notice of change in the **Federal Register** and the material must be available to the public.

(1) You may obtain a copy from the International Paralympic Committee at International Paralympic Committee, Adenauerallee 212–214, 53113 Bonn, Germany.

(2) All approved material is available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), Room 1063B, 810 Vermont Avenue, NW., Washington, DC 20420, or at the National Archives and Records Administration (NARA). For information on the availability of approved materials at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The IPC standards are also available here: *http://www.va.gov/ABOUT_VA/docs/ParalympicClassificationCode.pdf.*

(Authority: 38 U.S.C. 322(d))

Paralympic Training Center refers to the following locations: The United States Olympic Training Center at Chula Vista, California; the United States Olympic Training Center at Colorado Springs, Colorado; the United States Olympic Training Center at Lake Placid, New York; the Lakeshore Foundation in Birmingham, Alabama; and the University of Central Oklahoma in Edmond, Oklahoma.

(Authority: 38 U.S.C. 322(d))

§ 76.2 Assistance allowance.

(a) VA will pay an allowance to a veteran with a disability who is:

(1) Invited by the United States Paralympics (USP) to compete for a slot on, or selected for, the USP Team for any month or part of any month in which the veteran is training or competing in any event sponsored by the USP or the IPC; or

(2) Residing at a USP training center in connection with any paralympic training or competition for the period certified under § 76.3.

(b) In providing this allowance, VA will periodically assess funding for the allowance. If a periodic assessment reveals that funding is insufficient to pay all applicants, VA will first pay in full veterans with service-connected disabilities, and then pay others in full in the order in which their completed applications are received.

(Authority: 38 U.S.C. 322(d))

§ 76.3 Application and certification.

To receive an allowance—

(a) A veteran must submit a complete application identifying any dependents upon which a higher payable rate of allowance may be based; and

(b) USP must provide certification of the veteran's participation in training or competition sponsored by the USP or the IPC, or residence at a USP training center, for the period for which payment is requested. The certification must specify whether the payment is due for training, competition, or residence, and the dates of the training, competition, or residence for which payment is due.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0760.

(Authority: 38 U.S.C. 322(d))

§ 76.4 Amount of allowance.

The following rules govern the amount of allowance payable to veterans under this section.

(a) Payment will be made at the rate paid for a full-time institutional program under chapter 31 of title 38, United States Code (Chapter 31) that is in effect for a period of certified participation, as prescribed by paragraph (b) of this section. (*See* 38 CFR 21.260.)

(b) Payment may be made for each day at 1/30 of the monthly rate to veterans who train or compete in USP or IPC sponsored events for each day of training or competition, or to veterans who reside at a USP training center, for each day of residence, or on a monthly basis at the monthly rate to veterans who train or compete continuously for a full month, or to veterans who reside at a USP training center for a full month.

(c) VA will pay the allowance at a rate paid to a veteran with dependents for a full-time Chapter 31 institutional program upon receipt of appropriate documentation that a veteran who qualifies for the allowance has dependents. (*See* 38 CFR 21.260.)

(Authority: 38 U.S.C. 322(d), 3108)

[FR Doc. 2011–5951 Filed 3–15–11; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Shipping Services Product Launch of Parcel Select Regional Ground

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to introduce a new competitive shipping option, Parcel Select Regional Ground ™ service.

DATES: *Effective Date:* April 17, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Key at (202) 268–7492 or Carol A. Lunkins at (202) 268–7262.

SUPPLEMENTARY INFORMATION: On February 16, 2011, Governors of the United States Postal Service approved classification changes outlined by USPS® on the introduction of Parcel Select Regional Ground service. This final rule describes pricing, product features, and mailing standards for Parcel Select Regional Ground.

Parcel Select Regional Ground is a new commercial plus shipping option for mailers who ship lightweight parcels primarily destined for USPS zones local, 1, 2, and 3. This competitive, nonpresort product is a category of Parcel Select and is available for mailers who enter barcoded, machinable parcels weighing 5 pounds or less, pay postage with permit imprint, and enter mailpieces at origin Sectional Center Facility (OSCF) and origin Network Distribution Center (ONDC) locations authorized to accept Parcel Select Regional Ground mailings. When either the Intelligent Mail® package barcode or a Confirmation Services barcode is used, Parcel Select Regional Ground service includes optional electronic Delivery Confirmation ™ service at no additional charge, which allows mailers to confirm delivery of their packages. Merchandise Return Service cannot be used for items returned at Parcel Select Regional Ground prices.

This domestic product will be available to 48 of the continental United States, excluding Hawaii, Alaska, territories and possessions, and freely associated States.

Price Application

Parcel Select Regional Ground prices are based on the weight increment and the zone to which the piece is addressed. The minimum price per piece is the 1-pound price. Mailpieces that do not meet the eligibility requirements will be charged the Parcel Select barcoded, nonpresort price.

Authorization

To qualify for Parcel Select Regional Ground prices, mailers must have a customer commitment agreement with the Postal Service; customers may contact their account manager or the manager, Solutions Development by e-mailing *commercialpricing@usps.gov.*

Eligibility and Postage Payment

Parcel Select Regional Ground parcels must measure .35 cubic foot or less, weigh 5 pounds or less, bear a designated postal routing and tracking barcode(s), and be a machinable parcel.

Parcel Select Regional Ground prices are available to customers who:

- Establish a customer commitment agreement with USPS.
- In succeeding years, maintain account volumes that exceed 10,000 Parcel Select Regional Ground parcels in the previous calendar year.
- Pay for postage using a permit imprint.
- Enter mailpieces with a routing barcode included as part of a concatenated Intelligent Mail package barcode (IMpb) or a Confirmation Services GS–128 barcode. Optionally, a postal routing barcode may be printed separately with a non-concatenated barcode.
- Enter a minimum of 200 pieces or 50 pounds of mail for each mailing.
- Use the Electronic Verification System (eVS®) or submit an electronic postage statement with a computerized manifest.
- Enter mailings destined for zones local, 1, 2, and 3 at eligible eVS OSCF and/or mailings destined for zones local—8 at ONDC locations.

Extra Services and Other Services

The following extra services are allowed with Parcel Select Regional Ground items: Delivery Confirmation (electronic option only), Signature Confirmation (electronic option only), insurance, and Hold For Pickup service.

Markings and Mail Preparation

The basic required marking "Parcel Select—Regional Ground" must be printed on each piece claimed at this price. The basic required marking must be placed in the postage area (printed or produced as part of, or directly below or to the left of, the permit imprint indicia). Optionally, the basic required marking may be printed on the shipping address label as service indicators composed of a service icon and service banner as follows:

- The service icon that identifies the marking must be a 1-inch solid black square with a "G" printed in 16-point bold sans serif typeface, uppercase letters in white print, centered within the square, and it must appear in the upper left corner of the shipping label.
- The service banner must appear directly below the postage payment area and the service icon, and it must extend across the shipping label. The appropriate marking "PARCEL

SELECT—RG" must be preceded by the text "USPS" and must be printed in minimum 20-point bold sans serif typeface, uppercase letters, centered within the banner, and bordered above and below by minimum 1-point separator lines. There must be a 1/16-inch clearance above and below the text.

Each piece in a Parcel Select Regional Ground mailing must bear an additional price marking. Markings must appear in either the postage area or in the address area on the line directly above or two lines above the address if the marking appears alone (when no other information appears on that line). The following price markings are required:

- Origin SCF Entry—"OSCF".
- Origin NDC Entry—"ONDC".

When using the Electronic Verification System (eVS), the marking "eVS" (or the alternative "e–VS" or "E–VS") must appear directly below the permit number.

All Parcel Select Regional Ground mailpieces must bear a delivery address that includes the correct ZIP Code™ or ZIP+4® code. Each piece must bear the sender's return address.

Deposit and Entry

Parcel Select Regional Ground mailings may be entered according to the following levels:

OSCF Entry

- Mailings that are entered at the OSCF must include only mailpieces destined for zones local, 1, 2, and 3, but pieces may be destined for addresses outside that OSCF service area.
- No other mailings may be combined on the same postage statement or commingled in the same container with OSCF Parcel Select Regional Ground mailpieces.

ONDC Entry

- Mailings that are entered at the ONDC for zones local—8 are required to have the mailpieces within the ONDC service area segregated from the pieces outside the ONDC service area according to L601.
- No other mailings may be combined on the same postage statement or commingled in the same container with ONDC Parcel Select Regional Ground mailpieces.

Mailings may not be dropped in collection boxes, picked up by carriers, or entered at retail Post Office™ locations. All mailings must be presented for verification and acceptance where the permit is held. All such mailings must be deposited at locations and times specified by the postmaster or designee at the approved offices (co-located at OSCF and ONDC locations) that will verify and accept the mailing.

A completed and signed PS Form 3605–R, *Postage Statement—Package Services,* must accompany all mailings, unless eVS is used.

In accordance with the Postal Accountability and Enhancement Act, on February 17, 2011, the Postal Service filed a Notice with the Postal Regulatory Commission (PRC) regarding Parcel Select Regional Ground. Regulatory review may take up to 30 days from that date.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

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

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

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

* * * * *

400 Commercial Parcels

401 Physical Standards

1.0 Physical Standards for Parcels

* * * * *

1.3 Maximum Weight and Size

[Revise the second and third sentences of 1.3 to incorporate Regional Ground as follows:]

* * * Lower weight limits apply to Priority Mail mailed at Commercial Plus Cubic and Regional Rate Box prices, First-Class Mail, Standard Mail, Parcel Select Regional Ground, and Bound Printed Matter. Pieces may not measure more than 108 inches in length and girth combined, except Parcel Select. Parcel Select Regional Ground parcels may not measure more than .35 cubic foot, and Parcel Select parcels may not measure more than 130 inches in length and girth combined. * * *

* * * * *

2.0 Additional Physical Standards by Class of Mail

* * * * *

2.5 Parcel Select

* * * * *

[Add new 2.5.3 as follows:]

2.5.3 Parcel Select Regional Ground

These standards apply to Parcel Select Regional Ground mailpieces:

a. Measure .35 cubic foot or less.
b. Be a machinable parcel.
c. Weigh 5 pounds or less.

* * * * *

402 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Markings

* * * * *

2.5 Parcel Select, Bound Printed Matter, Media Mail, and Library Mail Markings

2.5.1 Basic Markings

[Revise the first sentence of the introductory text of 2.5.1 as follows:]

The basic required marking (*e.g.,* "Parcel Select", "Parcel Select Regional Ground", "Bound Printed Matter", "Media Mail", "Library Mail") must be printed on each piece claimed at the respective price. * * *

* * * * *

[Redesignate current item 2.5.1b as item c and add new item b as follows:]

b. For Parcel Select Regional Ground mailpieces, the service icon must be a 1-inch solid black square with a "G" printed in 16-point bold sans serif typeface, uppercase letters in white print, centered within the square, and be in the upper left corner of the shipping label.

[Revise the second sentence of redesignated 2.5.1c to add the Regional Ground markings as follows:]

c. * * * The appropriate marking (*e.g.,* "PARCEL SELECT", "PARCEL SELECT—RG", "MEDIA MAIL") must be preceded by the text "USPS" and be printed in minimum 20-point bold sans serif typeface, uppercase letters, centered within the banner, and bordered above and below by minimum 1-point separator lines. * * *

* * * * *

[Renumber current 2.5.3 through 2.5.6 as 2.5.4 through 2.5.7 and add new 2.5.3 as follows:]

2.5.3 Parcel Select Regional Ground Markings

Each piece in a Parcel Select Regional Ground mailing must bear a price

marking of "Parcel Select—Regional Ground" in either the postage area described in 2.5.1 or in the address area on the line directly above or two lines above the address if the marking appears alone. The "Parcel Select" marking by itself is not allowed on any Parcel Select Regional Ground mailpiece. In addition, items entered at an SCF must be marked "OSCF Entry," and items entered at an NDC must be marked "ONDC Entry" in the same area as the basic price marking.

* * * * *

450 Parcel Select

453 Prices and Eligibility

1.0 Prices and Fees

1.1 Price Application

[Revise introductory paragraph of 1.1 by adding a new second to last sentence as follows:]

* * * For Parcel Select Regional Ground price categories, *see* 3.4. * * *

* * * * *

[Revise the title of 3.0 as follows:]

3.0 Price Eligibility for Parcel Select and Parcel Select Regional Ground

* * * * *

[Renumber 3.4 through 3.7 as 3.5 through 3.8 and add new 3.4 as follows:]

3.4 Parcel Select Regional Ground

Parcel Select Regional Ground is a nonpresort product which requires postage payment by permit imprint. There are two price categories for Parcel Select Regional Ground:

a. OSCF entry—Mailpieces destined for zones local, 1, 2, and 3.

b. ONDC entry—Mailpieces for zones local—8.

3.4.1 General Eligibility

Parcel Select Regional Ground prices are available for machinable parcels (*see* 401.1.5), measure .35 cubic foot or less and weigh 5 pounds or less when customers meet the following requirements:

a. Establish a customer commitment agreement with USPS (*see* 3.4.4).

b. In succeeding years, maintain account volumes that exceed 10,000 Parcel Select Regional Ground parcels in the previous calendar year.

c. Pay for postage using a permit imprint.

d. Apply one of the following routing barcodes on each mailpiece:

1. A routing barcode included as part of a concatenated Intelligent Mail package barcode.

2. A Confirmation Services GS–128 barcode.

3. A postal routing barcode may be printed separately with a non-concatenated barcode under 708.5.0.

e. Pay postage by permit imprint using the Electronic Verification System (eVS) or submit an electronic postage statement with a computerized manifest.

f. Enter mailings at eligible location that are authorized to accept Parcel Select Regional Ground mailings.

3.4.2 Parcel Select Regional Ground—OSCF

Parcel Select Regional Ground OSCF prices are available for parcels which are entered at eligible OSCF locations destined to zones local, 1, 2, and 3 from that OSCF entry, and that meet requirements in 3.4.1.

3.4.3 Parcel Select Regional Ground—ONDC

Parcel Select Regional Ground ONDC prices are available for parcels to zones local—8 with the pieces for the ONDC service area segregated from the pieces outside the ONDC service area according to L601 and that meet requirements in 3.4.1.

3.4.4 Parcel Select Regional Ground Eligible Locations

For a listing of eligible OSCF and ONDC locations, contact your local USPS account representative.

3.4.5 Customer Commitment Agreement

Parcel Select Regional Ground prices are available for customers who have a customer commitment agreement with USPS. For additional information, mailers must contact their account manager or the manager, Solutions Development by e-mailing *commercialpricing@usps.gov.*

* * * * *

3.7 Delivery and Return Addresses

[Revise the third sentence of renumbered 3.7 as follows:]

* * * Except Parcel Select Regional Ground, alternative addressing formats under 602.3.0 or detached address labels under 602.4.0 may be used.

3.8 Hold For Pickup

[Revise renumbered 3.8 as follows:]

Under Hold For Pickup service, only Parcel Select barcoded, nonpresorted parcels and Parcel Select Regional Ground parcels are eligible for this service and are held at a designated Post Office location for pick up by a specified addressee or designee (*see* 508.7).

454 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

* * * * *

[Add new 1.1.1 as follows:]

1.1.2 Postage Payment Options for Parcel Select Regional Ground

The following postage payment standards apply for Parcel Select Regional Ground:

a. Permit imprint must be used for postage payment, and the mailer must have a permit imprint authorization at the eligible OSCF or ONDC where mailings are deposited.

b. Submit all mailings by using the Electronic Verification System (eVS) or submitting an electronic postage statement with a computerized manifest.

c. Mailings may not be entered by Plant Verified Drop Shipment.

* * * * *

455 Mail Preparation

* * * * *

[Add new 7.0 as follows:]

7.0 Preparing Parcel Select Regional Ground

7.1 Definition

Parcel Select Regional Ground parcels (*see* 453.3.4.1) are lightweight parcels entered at eligible OSCF (zones local, 1, 2, and 3) and ONDC (zones local—8) locations. This product is available to 48 of the continental United States excluding Hawaii, Alaska, territories and possessions, and freely associated States.

7.2 Basic Standards

Parcels must be barcoded, machinable (401.1.5), weigh 5 pounds or less, and measure .35 cubic foot or less.

7.3 Sacking and Labeling

Sacking is not required; however, mailers may prepare Parcel Select Regional Ground machinable parcels in sacks under 2.0 and 7.2 or on pallets under 705.8.0. When presented to USPS, pieces may not be comingled with any other mail class.

7.3.1 Sack Preparation

Sack size, preparation sequence, and Line 1 labeling:

a. OSCF: optional; (no minimum); for Line 1—Use prefix MXD, site name, 3 digit facility identifier (Use the listing for eligible OSCF locations—*see* 4.5.3.3.4.4).

b. ONDC: optional (no minimum); for Line 1—Utilize L601, Column B.

c. MXD ONDC: optional (no minimum); for Line 1—Use prefix MXD, site name and 3 digit ZIP per L601, Column B.

7.3.2 Sack Line 2

Line 2 labeling and Content Identifier Number (CIN):

a. OSCF: "PSVC MACH WKG," CIN 684.

b. ONDC: "PSVC MACH NDC," CIN 683 for pieces destinating within the ONDC service area according to L601.

c. MXD ONDC: "PSVC MACH WKG," CIN 683 for pieces destinating outside the ONDC service area according to L601.

456 Enter and Deposit

1.0 Verification

1.1 Verification and Entry

[Revise 1.1 by adding a new last sentence as follows:]

* * * Parcel Select Regional Ground mailings may not be entered by PVDS or as a plant-loaded mailing.

1.2 Office of Mailing

[Revise 1.2 by deleting the current text of 1.2 in its entirety and adding new 1.2.1 and 1.2.2 as follows:]

1.2.1 Parcel Select

[Revise the text of 1.2.1 as follows:]

Parcel Select must be mailed at the Post Office from which the zone-based postage was computed, except under 1.2.2, 1.3, and 1.4.

1.2.2 Parcel Select Regional Ground

Parcel Select Regional Ground must be mailed at a business mail entry unit (BMEU) co-located at eligible OSCF or ONDC locations. Mailers may deposit only eVS mailings at eligible OSCF or ONDC locations that are not co-located with a BMEU. For eligible locations, contact your local USPS account representative.

1.3 Redirected Mailings

[Revise the introductory paragraph of 1.3 as follows:]

Except Parcel Select Regional Ground, a shipper who presents large shipments of zoned Parcel Select mail may be authorized or directed to deposit such shipments at another postal facility when processing or logistics make such an alternative desirable for the USPS, subject to these conditions:

* * * * *

1.4 NDC Acceptance

[Revise the introductory text of 1.4 as follows:]

Except Parcel Select Regional Ground, a mailer may present Parcel Select at a NDC for acceptance if: * * *

* * * * *

2.0 Deposit

* * * * *

[Revise the title and first sentence of the introductory paragraph of 2.4 as follows:]

2.4 Mail Separation and Presentation of Destination Entry Mailings

Mailers must have Parcel Select destination entry mailings verified under an authorized PVDS system (*see* 705.16.0) or eVS (*see* 705.2.9), or present mailings for verification and acceptance at a BMEU located at a designated destination Postal Service facility. * * *

* * * * *

[Revise the title of 2.16 as follows:]

2.16 DNDC Parcel Select—Acceptance at Designated SCF–USPS Benefit

* * * * *

[Revise the title of 2.17 as follows:]

2.17 DNDC Parcel Select—Acceptance at Designated SCF

* * * * *

[Add new 2.18 as follows:]

2.18 Parcel Select Regional Ground—Deposit at OSCF

Parcel Select Regional Ground mailings that are deposited at the OSCF must include only mailpieces destined for zones local, 1, 2, and 3, but pieces may be destined for addresses outside that OSCF service area.

[Add new 2.19 as follows:]

2.19 Parcel Select Regional Ground—Deposit at ONDC

Parcel Select Regional Ground mailings that are deposited at the ONDC may include mailpieces for zones local—8 but pieces destinating within the ONDC service area must be segregated from pieces destinating outside the ONDC service area according to L601.

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

4.0 Insured Mail

* * * * *

4.2 Basic Information

* * * * *

4.2.2 Eligible Matter

The following types of mail may be insured:

[Revise item c as follows:]

c. Package Services, Parcel Select, and Parcel Select Regional Ground pieces.

* * * * *

9.0 Delivery Confirmation

* * * * *

9.2 Basic Information

* * * * *

9.2.2 Eligible Matter

[Revise the first sentence of the introductory text of 9.2.2 as follows:]

Delivery Confirmation is available for First-Class Mail parcels; all Priority Mail pieces (including Critical Mail); Standard Mail prepared as Not Flat-Machinable pieces or as machinable or irregular parcels (electronic option only); Package Services, Parcel Select, and Parcel Select Regional Ground parcels (electronic option only) under 401.1.0. * * *

* * * * *

10.0 Signature Confirmation

* * * * *

10.2 Basic Information

* * * * *

10.2.2 Eligible Matter

[Revise the first sentence of the introductory text of 10.2.2 as follows:]

Signature Confirmation is available for First-Class Mail parcels; all Priority Mail pieces (including Critical Mail); Package Services, Parcel Select, and Parcel Select Regional Ground (electronic option only) parcels under 401.1.0. * * *

* * * * *

508 Recipient Services

* * * * *

7.0 Hold For Pickup

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Basic Eligibility

[Revise the last sentence of the introductory paragraph for 7.2.2 as follows:]

* * * Hold For Pickup service is also available with online and commercial mailings of Priority Mail (except Critical Mail), First-Class Mail parcels, Parcel Select barcoded, nonpresorted parcels, and Parcel Select Regional Ground parcels when: * * *

* * * * *

7.2.3 Additional Eligibility Standards

Parcels must meet these additional physical requirements:

* * * * *

[Revise items 7.2.3b and c as follows:]

b. Except as provided in 7.2.3c, Parcel Select barcoded, nonpresorted parcels, and Parcel Select Regional Ground parcels must be greater than 3/4 inch thick at the thickest point.

c. If the mailpiece is a Parcel Select barcoded, nonpresorted parcel, or Parcel Select Regional Ground parcel under 401.1.0 and no greater than ¾ inch thick, the contents must be prepared in a container that is constructed of strong, rigid fiberboard or similar material or in a container that becomes rigid after the contents are enclosed and the container is secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

7.2.4 Service Options

The Hold For Pickup service options are:

* * * * *

[Revise the second sentence of 7.2.4b as follows:]

b. Electronic option: * * * The electronic option is available for Priority Mail (excluding Critical Mail), First-Class Mail parcels, Parcel Select barcoded, nonpresorted parcels, and Parcel Select Regional Ground parcels. * * *

* * * * *

7.3 Preparation Definitions and Instructions

Except for Express Mail Hold For Pickup presented at retail Post Office locations, mailers or their agents must prepare mailpieces bearing the "Hold For Pickup" label as follows:

[Revise 7.3a as follows:]

a. Enter mailpieces at the Priority Mail, First-Class Mail parcel, Parcel Select barcoded, nonpresorted, or Parcel Select Regional Ground price.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

602 Addressing

1.0 Elements of Addressing

* * * * *

1.5 Return Addresses

* * * * *

1.5.3 Required Use of Return Addresses

The sender's domestic return address must appear legibly on:

* * * * *

[Revise the text of 1.5.3h as follows:]

h. Parcel Select (including Parcel Select Regional Ground).

* * * * *

3.0 Use of Alternative Addressing

3.1 General Information

3.1.1 Use

* * * * *

3.1.2 Prohibited Use

Alternative addressing formats may not be used on:

[Revise 3.1.2 by reallocating items d through e as items e through f and add new item d as follows:]

d. Parcel Select Regional Ground pieces.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System

2.1 Description

2.1.1 Using an MMS

[Revise 2.1.1 by adding Parcel Select Regional Ground to the second sentence as follows:]

* * * The MMS is an automated system that allows a mailer to document postage and fees for all pieces in Express Mail (electronic verification system "eVS" only under 2.9), First-Class Mail, Standard Mail, Parcel Select, Parcel Select Regional Ground, Package Services, and international permit imprint mailings. * * *

2.1.2 Electronic Verification System

[Revise first sentence of 2.1.2 and add a new last sentence as follows:]

Mailers using a MMS when presenting Parcel Select Regional Ground mailings; Parcel Select destination entry mailings under 456.2.0 or, commingled parcel mailings under 6.0 or 7.0, may document and pay postage using the Electronic Verification System (eVS) (*see* 2.9). * * * Parcel Select Regional Ground eVS and non-eVS mail cannot be commingled within the same mailing or mailing container with any other mail class. eVS Regional Ground ONDC mailpieces for zones local—8 must be segregated by pieces destinating within the ONDC service area from pieces destinating outside the service area according to L601.

* * * * *

2.9 Electronic Verification System

* * * * *

2.9.2 Availability

[Revise the introductory text of 2.9.2 as follows:]

eVS may be used only for mail paid with a permit imprint and the following classes and subclasses of mail:

* * * * *

[Revise 2.9.2 by reallocating items h through j as i through k and adding new item h as follows:]

h. Parcel Select Regional Ground. Prices include nonpresorted prices for machinable, barcoded parcels entered at eligible OSCF and ONDC locations.

* * * * *

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

[Revise the introductory text of 6.1.1 as follows:]

Standard Mail parcels, NFMs, Package Services, and Parcel Select parcels (except Parcel Select Regional Ground) in combined mailings must meet the following standards:

* * * * *

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 7.1.1 by adding a new last sentence as follows:]

* * * Mailers may not combine Parcel Select Regional Ground parcels with Parcel Select or other parcels.

* * * * *

8.0 Preparing Pallets

* * * * *

8.5 General Preparation

* * * * *

8.5.2 Required Preparation

[Revise the introductory text of 8.5.2 as follows:]

The following standards apply to Periodicals, Standard Mail, Parcel Select, Parcel Select Regional Ground, and Package Services, except Parcel Select mailed at NDC Presort, ONDC Presort, DSCF, and DDU prices.

* * * * *

16.0 Plant-Verified Drop Shipment

16.1 Description

* * * * *

16.1.2 Function

Under PVDS:

* * * * *

[Revise item 16.1.2c as follows:]

c. For Standard Mail, Parcel Select (except Parcel Select Regional Ground), and Package Services, postage and fees are paid under a valid permit at the Post Office serving the mailer's plant, or as designated by the district manager.

* * * * *

21.0 Optional Combined Parcel Mailings

21.1 Basic Standards for Combining Parcel Select, Package Services, and Standard Mail Parcels

21.1.1 Basic Standards

[Revise the introductory text of 21.1.1 as follows:]

Package Services parcels, Parcel Select parcels (except Parcel Select Regional Ground), Standard Mail parcels and Not Flat-Machinables (NFMs) in a combined parcel mailing must meet the following standards:

* * * * *

708 Technical Specifications

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

6.2.4 3–Digit Content Identifier Numbers

* * * * *

Exhibit 6.2.4 3-Digit Content Identifier Numbers

CLASS AND MAILING CIN HUMAN–READABLE CONTENT LINE

* * * * *

[Revise Exhibit 6.2.4 by modifying the Parcel Select section as follows:]

Package Services

* * * * *

[Revise Package Services by adding new Parcel Select Regional Ground section directly after Parcel Select—Irregular (Nonmachinable) Parcels as follows:]

Parcel Select Regional Ground Machinable Parcels

ONDC sacks	683	PSVC MACH NDC.
MXD ONDC sacks.	683	PSVC MACH WKG.
OSCF sacks	684	PSVC MACH WKG.

* * * * *

Index and Appendices

* * * * *

Labeling Lists

* * * * *

[Revise the title of L600 as follows:]

L600 Standard Mail, Package Services, and Parcel Select Regional Ground

L601 Network Distribution Centers (NDCs)

[Revise L601 by adding new item g as follows:]

g. Parcel Select Regional Ground nonpresorted, machinable parcels or sacks on pallets to ONDC destinations. For labeling ONDC sacks and pallets, mailers must use Column B information of the ONDC serving the 3-digit ZIP Code prefix of the Post Office at which the mail is entered.

* * * * *

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

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2011–6057 Filed 3–15–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2009–0609; FRL–8866–5]

Bacillus thuringiensis eCry3.1Ab Protein in Corn; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit (EUP) No. 67979–EUP–8. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting to extend the temporary tolerance exemption that was set to expire on June 1, 2012. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn. The temporary tolerance exemption now expires on March 1, 2013.

DATES: This regulation is effective March 16, 2011. Objections and requests for hearings must be received on or before May 16, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0609. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).

• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

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

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

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0609 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 16, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0609, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of January 21, 2011 (76 FR 3885) (FRL–8855–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0G7756) by Syngenta Seeds, Inc., P.O. Box 12257, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 174 be amended by extending a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn. This notice referenced a summary of the petition prepared by the petitioner Syngenta Seeds, Inc., which is available in the docket, *http://www.regulations.gov*. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *" Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Product Characterization Overview

Based on amino acid sequence homology and crystal structures, known Cry proteins have a similar three-dimensional structure comprised of three domains, Domain I, II, and III (Refs. 3, 5, 6 and 7). The toxin portions of Cry proteins are characterized by having five conserved blocks (CB) across their amino acid sequence. These are numbered CB1 to CB5 from the N-terminus to the C-terminus (Ref. 4). The sequences preceding and following these conserved blocks are highly variable and are designated as variable regions V1 to V6.

Syngenta Seeds, Inc. developed Event 5307 maize (*Zea mays*) through *Agrobacterium*-mediated transformation (via plasmid vector PV–ZMIR245) to express eCry3.1Ab protein for use as a plant-incorporated protectant (PIP). This proposed PIP is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and modified Cry3A proteins. The eCry3.1Ab protein was genetically engineered via exchanging the variable regions (V1 to V6) between the mCry3A and the Cry1Ab proteins for enhanced toxicity against western corn rootworm (WCR, *Diabrotica virgifera*). The eCry3.1Ab protein consists of a fusion between the N-terminus (Domain I, Domain II, and a portion of Domain III) of mCry3A and the C-terminus (a portion of Domain III and variable region 6) of Cry1Ab. The eCry3.1Ab

protein is 654 amino acid residues in size and is approximately 73.7 kilodaltons.

B. Mammalian Toxicity and Allergenicity Assessment

Syngenta has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure eCry3.1Ab protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in the crop. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this PIP was derived (*see* 40 CFR 158.2130(d)(1)(i) and 158.2140(d)(7)). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies, such as the mouse oral toxicity study, to verify and quantify the observed adverse effects and clarify the source of these effects (Tiers II & III).

An acute oral toxicity study in mice (Master Record Identification Number MRID No. 477539–01) indicated that eCry3.1Ab is nontoxic. Two groups of 10 male and 10 female mice were orally dosed (via gavage) with 2,000 milligrams/kilograms bodyweight (mg/kg bwt) (eCry3.1Ab protein mg/kg bwt) of the eCry3.1Ab–0208 test substance, the microbial-produced eCry3.1Ab protein. All treated animals gained weight and had no test material-related clinical signs and no test material-related findings at necropsy. Since there were no significant differences between the test and control groups related to the oral administration of eCry3.1Ab–0208 test material, the eCry3.1Ab protein does not appear to cause any significant adverse effects at an exposure level of up to 2,000 mg/kg bwt and supports the finding that the eCry3.1Ab protein would be nontoxic to mammals.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 8). Therefore, since no acute effects were shown to be caused by eCry3.1Ab, even at relatively high dose levels, the eCry3.1Ab protein is not considered toxic. Further, amino acid sequence comparisons showed no similarities between the eCry3.1Ab protein and known toxic proteins in protein databases that would raise a safety concern.

Since eCry3.1Ab is a protein, allergenic sensitivities were considered. Currently, no definitive tests exist for determining the allergenic potential of novel proteins. Therefore, EPA uses a "weight-of-the-evidence" approach where the following factors are considered: Source of the trait; amino acid sequence similarity with known allergens; prevalence in food; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation (as recommended by CAC 2003, *see* Ref. 2). Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid and proteases; may be glycosylated; and present at high concentrations in the food.

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of eCry3.1Ab with known allergens showed no significant overall sequence similarity or identity at the level of eight contiguous amino acid residues. This is the appropriate level of sensitivity to detect possible IgE epitopes without high false positive rates.

3. *Prevalence in food.* Preliminary expression level analysis shows that the eCry3.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low. Expression in Event 5307 leaf is 35 parts per million (ppm); root is 6 ppm; and pollen is 0.15 ppm. Thus, the expression has been shown to be in the parts per million range.

4. *Digestibility.* The eCry3.1Ab protein was rapidly digested in simulated mammalian gastric fluid containing pepsin at a pH of 1.2 at 37°C. The estimated degradation rate (DT50) is less than 1 minute for eCry3.1Ab protein.

5. *Glycosylation.* The eCry3.1Ab protein expressed in corn was shown not to be glycosylated.

6. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for eCry3.1Ab to be a food allergen is minimal.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. First, with respect to other related substances, the eCry3.1Ab protein is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and mCry3A proteins, both of which are registered PIPs that were previously assessed as having a lack of mammalian toxicity at high levels of exposure. Exemptions from the requirement of a tolerance have been established for Cry1Ab in food and mCry3A in maize, (*see* 40 CFR 174.511 and 40 CFR 174.505). Second, and specific to the eCry3.1Ab protein, these considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the PIP chemical residue and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the PIP is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. The amino acid homology assessment included similarity to known aeroallergens. It has been demonstrated that there is no evidence of occupationally-related respiratory symptoms, based on a health survey on migrant workers after exposure to *Bt* pesticides (Ref. 1). Exposure via residential or lawn use to infants and children is also not expected because the use sites for the eCry3.1Ab protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water.

However, oral toxicity testing done at a dose of 2 gm/kg showed no adverse effects. Furthermore, the expected dietary exposure from corn is several orders of magnitude lower than the amounts of eCry3.1Ab protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would present no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the eCry3.1Ab protein.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

Since eCry3.1Ab is not considered toxic, EPA has not found *Bacillus*

thuringiensis eCry3.1Ab protein in corn to share a common mechanism of toxicity with any other substances, and *Bacillus thuringiensis* eCry3.1Ab protein in corn does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that *Bacillus thuringiensis* eCry3.1Ab protein in corn does not have a common mechanism of toxicity with other substances. Following from this, EPA concludes that there are no cumulative effects associated with eCry3.1Ab that need to be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, *see* EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for the U.S. Population, Infants, and Children

The data submitted and cited regarding potential health effects for the eCry3.1Ab protein include the characterization of the expressed eCry3.1Ab protein in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

As discussed more fully in Unit III. above, the acute oral toxicity data submitted supports the prediction that the eCry3.1Ab protein would be nontoxic to humans. Moreover, eCry3.1Ab showed no sequence similarity to any known toxin. Because of this lack of demonstrated mammalian toxicity, no protein residue chemistry data for eCry3.1Ab were required for a human health effects assessment. Even so, preliminary expression level analysis showed eCry3.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low.

In addition, since eCry3.1Ab is a protein, its potential allergenicity was also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the eCry3.1Ab protein came from *Bacillus thuringiensis,* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that eCry3.1Ab protein will not be an allergen.

Considered together, the lack of mammalian toxicity at high levels of exposure to the eCry3.1Ab protein and the minimal potential for that protein to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

Finally, and specifically in regards to infants and children, FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

Based on its review and consideration of all the available information, as discussed in more detail above, the Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the eCry3.1Ab protein and the genetic material necessary for its production in corn. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has also concluded, again for the reasons discussed in more detail above, that there are no threshold effects of concern and, as a result, that an additional margin of safety for infants and children is unnecessary in this instance.

VII. Other Considerations

A. Analytical Enforcement Methodology

The Agency has determined that an analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. Nonetheless, a method for extraction and two test strip commercial kits to detect eCry3.1Ab protein via enzyme-linked immunosorbent assay analysis in corn have been submitted.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for *Bacillus thuringiensis* eCry3.1Ab protein in corn.

C. Response to Comments

One comment was received from an anonymous individual who objected in general terms to EPA granting registrations or experimental use permits of *Bacillus thuringiensis*-based pesticides or its approval of any corresponding tolerance exemptions, claiming that insufficient safety testing has been required. While the Agency understands that some individuals are opposed to all pesticide use, relevant data (discussed above) did serve as the basis for EPA's conclusion in this instance that there is a reasonable certainty of no harm from residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn.

VIII. Conclusion

The Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of eCry3.1Ab protein in corn and the genetic material necessary for its production. Therefore, the temporary tolerance exemption for residues of *Bacillus thuringiensis* eCry3.1Ab protein in or on corn is modified by extending the expiration date to March 1, 2013.

IX. References

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2. CAC. 2003. Alinorm 03/34: Joint FAO/WHO Food Standard Programme. Codex Alimentarius Commission, Twenty-Fifth Session, 30 July 2003. Rome, Italy. Appendix III: Guideline for Conduct of Food Safety Assessments of Foods Derived from Recombinant-DNA Plants; Appendix IV: Annex on Assessment of Possible

Allergenicity. Codex Alimentarius Commision, 47–60.

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6. Li J, Carroll J, Ellar DJ. 1991. Crystal Structure of Insecticidal delta-Endotoxin from *Bacillus thuringiensis* at 2.5 A resolution. *Nature.* 353: 815–821.

7. Nakamura K, Oshie K, Shimizu M, Takada Y, Oeda K, Ohkawa H. 1990. Construction of Chimeric Insecticidal Proteins Between the 130-kDa and 135-kDa Proteins of *Bacillus thuringiensis* subsp. *aizawai* for Analysis of Structure-Function Relationship. *Agricultural Biological Chemistry.* 54: 715–724.

8. Sjoblad RD, McClintock JT, Engler R. 1992. Toxicological Considerations for Protein Components of Biological Pesticide Products. *Regulatory Toxicology and Pharmacology.* 15(1): 3–9.

X. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 174

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

Dated: March 3, 2011.

Keith A. Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.532 is revised to read as follows:

§ 174.532 Bacillus thuringiensis eCry3.1Ab protein in corn; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop are exempt temporarily from the requirement of a tolerance when *Bacillus thuringiensis* eCry3.1Ab protein in corn is used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit 67979–EUP–8. This temporary exemption from the requirement of a tolerance expires and is revoked on March 1, 2013.

[FR Doc. 2011–6035 Filed 3–15–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8173]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the

effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
South Carolina:				
McCormick, Town of, McCormick County	450152	July 15, 1975, Emerg; June 25, 1976, Reg; April 4, 2011, Susp.	April 4, 2011 ...	April 4, 2011
McCormick County, Unincorporated Areas.	450226	December 29, 1975, Emerg; October 1, 1989, Reg; April 4, 2011, Susp.	*.....do	do.
Region V				
Michigan:				
Albion, City of, Calhoun County	260050	July 1, 1975, Emerg; June 15, 1982, Reg; April 4, 2011, Susp.	.....do	do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Albion, Township of, Calhoun County	260639	September 12, 1975, Emerg; October 15, 1982, Reg; April 4, 2011, Susp.	do	do.
Athens, Village of, Calhoun County	260558	March 24, 1977, Emerg; November 15, 1985, Reg; April 4, 2011, Susp.	do	do.
Battle Creek, City of, Calhoun County	260051	July 2, 1975, Emerg; April 4, 1983, Reg; April 4, 2011, Susp.	do	do.
Bedford, Township of, Calhoun County.	260052	May 30, 1975, Emerg; February 2, 1983, Reg; April 4, 2011, Susp.	do	do.
Burlington, Township of, Calhoun County	260651	December 2, 1975, Emerg; July 2, 1987, Reg; April 4, 2011, Susp.	do	do.
Burlington, Village of, Calhoun County	260559	November 21, 1975, Emerg; July 2, 1987, Reg; April 4, 2011, Susp.	do	do.
Clarence, Township of, Calhoun County	260560	May 12, 1977, Emerg; February 18, 1983, Reg; April 4, 2011, Susp.	do	do.
Convis, Township of, Calhoun County	260652	December 5, 1975, Emerg; February 11, 1983, Reg; April 4, 2011, Susp.	do	do.
Eckford, Township of, Calhoun County	260653	December 16, 1975, Emerg; August 19, 1986, Reg; April 4, 2011, Susp.	do	do.
Emmett, Township of, Calhoun County	260561	December 5, 1975, Emerg; June 1, 1983, Reg; April 4, 2011, Susp.	do	do.
Fredonia, Township of, Calhoun County	260562	December 22, 1975, Emerg; August 19, 1987, Reg; April 4, 2011, Susp.	do	do.
Homer, Village of, Calhoun County	260331	December 5, 1975, Emerg; May 3, 1982, Reg; April 4, 2011, Susp.	do	do.
Lee, Township of, Calhoun County	260668	March 26, 1976, Emerg; May 15, 1985, Reg; April 4, 2011, Susp.	do	do.
Leroy, Township of, Calhoun County	260655	February 19, 1976, Emerg; March 1, 1987, Reg; April 4, 2011, Susp.	do	do.
Marengo, Township of, Calhoun County	260563	May 30, 1979, Emerg; May 17, 1982, Reg; April 4, 2011, Susp.	do	do.
Marshall, City of, Calhoun County	260053	May 13, 1975, Emerg; April 1, 1982, Reg; April 4, 2011, Susp.	do	do.
Marshall, Township of, Calhoun County	260642	October 9, 1975, Emerg; February 11, 1983, Reg; April 4, 2011, Susp.	do	do.
Newton, Township of, Calhoun County	260647	November 18, 1975, Emerg; September 1, 1986, Reg; April 4, 2011, Susp.	do	do.
Pennfield, Charter Township, Calhoun County.	260564	August 25, 1975, Emerg; October 15, 1982, Reg; April 4, 2011, Susp.	do	do.
Sheridan, Township of, Calhoun County	260649	November 20, 1975, Emerg; March 11, 1983, Reg; April 4, 2011, Susp.	do	do.
Springfield, City of, Calhoun County	260054	August 11, 1975, Emerg; September 28, 1979, Reg; April 4, 2011, Susp.	do	do.
Tekonsha, Township of, Calhoun County	260709	July 20, 1977, Emerg; June 4, 1987, Reg; April 4, 2011, Susp.	do	do.
Tekonsha, Village of, Calhoun County	260565	December 19, 1975, Emerg; May 1, 1987, Reg; April 4, 2011, Susp.	do	do.
Ohio:				
Archbold, Village of, Fulton County	390603	April 30, 1976, Emerg; January 4, 1985, Reg; April 4, 2011, Susp.	do	do.
Bellville, Village of, Richland County	390604	June 30, 1976, Emerg; March 16, 1989, Reg; April 4, 2011, Susp.	do	do.
Butler, Village of, Richland County	390605	June 24, 1976, Emerg; November 15, 1989, Reg; April 4, 2011, Susp.	do	do.
Delta, Village of, Fulton County	390183	April 28, 1975, Emerg; May 15, 1984, Reg; April 4, 2011, Susp.	do	do.
Fayette, Village of, Fulton County	390829	February 8, 1999, Emerg; April 4, 2011, Reg; April 4, 2011, Susp.	do	do.
Lucas, Village of, Richland County	390661	September 24, 1987, Emerg; September 1, 1993, Reg; April 4, 2011, Susp.	do	do.
Mansfield, City of, Richland County	390477	April 2, 1975, Emerg; January 3, 1986, Reg; April 4, 2011, Susp.	do	do.
Metamora, Village of, Fulton County	390840	July 21, 1982, Emerg; May 16, 1995, Reg; April 4, 2011, Susp.	do	do.
Ontario, Village of, Richland County	390478	July 11, 1975, Emerg; January 30, 1984, Reg; April 4, 2011, Susp.	do	do.
Plymouth, Village of, Huron and Richland Counties.	390287	July 30, 1999, Emerg; April 4, 2011, Reg; April 4, 2011, Susp.	do	do.
Richland County, Unincorporated Areas	390476	December 11, 1984, Emerg; April 2, 1991, Reg; April 4, 2011, Susp.	do	do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Shelby, City of, Richland County	390479	July 30, 1975, Emerg; March 2, 1989, Reg; April 4, 2011, Susp.	.....do	do.
Wauseon, City of, Fulton County	390184	July 22, 1975, Emerg; July 6, 1984, Reg; April 4, 2011, Susp.	.....do	do.
Wisconsin:				
Arcadia, City of, Trempealeau County	550439	September 30, 1975, Emerg; August 19, 1991, Reg; April 4, 2011, Susp.	.....do	do.
Blair, City of, Trempealeau County	550440	February 27, 1975, Emerg; November 16, 1990, Reg; April 4, 2011, Susp.	.....do	do.
Eleva, Village of, Trempealeau County	550441	May 23, 1975, Emerg; December 5, 1989, Reg; April 4, 2011, Susp.	.....do	do.
Ettrick, Village of, Trempealeau County	550442	July 15, 1975, Emerg; June 15, 1982, Reg; April 4, 2011, Susp.	.....do	do.
Galesville, City of, Trempealeau County	550443	February 23, 1976, Emerg; March 16, 1981, Reg; April 4, 2011, Susp.	.....do	do.
Independence, City of, Trempealeau County.	550444	July 5, 1974, Emerg; September 27, 1991, Reg; April 4, 2011, Susp.	.....do	do.
Osseo, City of, Trempealeau County	550445	August 19, 1975, Emerg; September 5, 1990, Reg; April 4, 2011, Susp.	.....do	do.
Pigeon Falls, Village of, Trempealeau County.	550446	March 26, 1976, Emerg; September 16, 1988, Reg; April 4, 2011, Susp.	.....do	do.
Strum, Village of, Trempealeau County	555583	April 9, 1971, Emerg; May 13, 1972, Reg; April 4, 2011, Susp.	.....do	do.
Trempealeau, Village of, Trempealeau County.	555584	May 28, 1971, Emerg; December 12, 1972, Reg; April 4, 2011, Susp.	.....do	do.
Trempealeau County, Unincorporated Areas.	555585	May 14, 1971, Emerg; December 22, 1972, Reg; April 4, 2011, Susp.	.....do	do.
Whitehall, City of, Trempealeau County	550449	February 7, 1975, Emerg; November 16, 1990, Reg; April 4, 2011, Susp.	.....do	do.
Region VI				
Arkansas:				
Fulton, Town of, Hempstead County	050086	April 22, 1975, Emerg; August 3, 1982, Reg; April 4, 2011, Susp.	.....do	do.
Hempstead County, Unincorporated Areas.	050436	March 28, 1995, Emerg; October 1, 2007, Reg; April 4, 2011, Susp.	.....do	do.
Texas:				
Crockett, City of, Houston County	480359	June 24, 1975, Emerg; September 30, 1980, Reg; April 4, 2011, Susp.	.....do	do.
Grapeland, Town of, Houston County	480873	March 15, 2001, Emerg; August 1, 2008, Reg; April 4, 2011, Susp.	.....do	do.
Houston County, Unincorporated Areas	480872	July 2, 1993, Emerg; August 1, 2008, Reg; April 4, 2011, Susp.	.....do	do.
Lovelady, City of, Houston County	480874	June 22, 1990, Emerg; March 1, 1991, Reg; April 4, 2011, Susp.	.....do	do.
Maverick County, Unincorporated Areas	480470	N/A, Emerg; September 23, 1996, Reg; April 4, 2011, Susp.	.....do	do.
Woodville, City of, Tyler County	481035	August 1, 1979, Emerg; October 26, 1982, Reg; April 4, 2011, Susp.	.....do	do.
Region VII				
Iowa:				
Anamosa, City of, Jones County	190174	July 25, 1975, Emerg; August 19, 1987, Reg; April 4, 2011, Susp.	.....do	do.
Jones County, Unincorporated Areas	190919	March 21, 1979, Emerg; September 30, 1988, Reg; April 4, 2011, Susp.	.....do	do.
Monticello, City of, Jones County	190175	November 27, 1974, Emerg; April 2, 1979, Reg; April 4, 2011, Susp.	.....do	do.
Olin, City of, Jones County	190176	July 12, 1976, Emerg; February 1, 1987, Reg; April 4, 2011, Susp.	.....do	do.
Missouri:				
Cameron, City of, Clinton County	290104	August 25, 1975, Emerg; August 24, 1984, Reg; April 4, 2011, Susp.	.....do	do.
Gower, City of, Buchanan and Clinton Counties..	290105	June 23, 1975, Emerg; July 18, 1985, Reg; April 4, 2011, Susp.	.....do	do.
Lathrop, City of, Clinton County	290704	June 22, 1976, Emerg; July 18, 1985, Reg; April 4, 2011, Susp.	.....do	do.
Plattsburg, City of, Clinton County	290106	March 31, 1975, Emerg; February 2, 1983, Reg; April 4, 2011, Susp.	.....do	do.

*do = Ditto.

Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: March 8, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2011–6058 Filed 3–15–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06–123; FCC 10–188]

The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission denies two petitions for reconsideration filed by Telesat Canada (Telesat) challenging certain aspects of the processing and technical rules adopted for the 17/24 GHz Broadcasting-Satellite Service (BSS). Specifically, we decline to adopt Telesat's proposal that the Federal Communications Commission (Commission) impose additional blanket international coordination licensing conditions on U.S.-licensed 17/24 GHz BSS space stations. Finally, we are not persuaded by Telesat's argument that the Commission's technical and procedural rules concerning assignment of orbital locations and frequencies are inapplicable to requests filed by non-U.S.-licensed 17/24 GHz BSS space stations operators seeking to access the market in the United States.

DATES: Effective April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly, Satellite Division, International Bureau, at 202–418–7877 or via e-mail at *Andrea.Kelly@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Second Order on Reconsideration in IB Docket No. 06–123, FCC 10–188, adopted October 29, 2010 and released November 1, 2010. The full text of the Second Order on Reconsideration is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 07–174, Order on Reconsideration). The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or call the Consider & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

Synopsis

The Commission denied two petitions for reconsideration filed by Telesat Canada (Telesat) challenging certain aspects of the processing and technical rules adopted for the 17/24 GHz Broadcasting-Satellite Service (BSS). Specifically, we decline to adopt Telesat's proposal that the Commission impose additional blanket international coordination licensing conditions on U.S.-licensed 17/24 GHz BSS space stations. Commission provisions for imposing additional coordination requirements already exist and can be invoked, if needed, on a case-by-case basis. While we reject Telesat's petition for reconsideration on this point, we will continue to follow the applicable coordination procedures set out in the International Telecommunication Union's (ITU) Radio Regulations for the particular band segment being coordinated. Finally, we are not persuaded by Telesat's argument that the Commission's technical and procedural rules concerning assignment of orbital locations and frequencies are inapplicable to requests filed by non-U.S.-licensed 17/24 GHz BSS space stations operators seeking to access the market in the United States. These rules apply to both U.S.- and non-U.S.-licensed operators.

In May 2007, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, 72 FR 46939, August 22, 2007. In the *17/24 GHz BSS R&O,* the Commission decided to apply the first-come, first-served licensing process to applications for geostationary satellite orbit (GSO)-like space stations in this service. At the same time, the Commission also adopted technical rules, including a framework in which 17/24 GHz BSS space stations would operate at orbital locations spaced at four degree intervals, as set forth in *17/24 GHz BSS R&O* Appendix F (known as Appendix F locations). In adopting this four-degree spacing framework, the Commission recognized that rigid application of the spacing plan would not serve the public interest because at some Appendix F locations there might be undesirable operational constraints required to coordinate physical operations with co-located satellites, or because there might be a co-primary Direct Broadcast Satellite (DBS) or other ITU Region 2 BSS satellite receiving feeder-link signals in the 17.3–17.8 GHz band at or very near that location. As a result, the Commission also provided the flexibility to operate at locations offset from the Appendix F locations with accompanying reductions in power and interference protection. In addition, the Commission adopted limits for uplink and downlink power levels to minimize the possibility of harmful interference, stipulated criteria to facilitate sharing in the 24.75–25.25 GHz and 17.3–17.8 GHz bands, adopted a minimum antenna diameter, and adopted antenna performance standards. The Commission also adopted its proposal to apply the *DISCO II* framework to requests by non-U.S.-licensed 17/24 GHz BSS space stations operators to serve the market in the United States. In addition, the Commission adopted geographic service rules to require space station licensees to provide service to Alaska and Hawaii. At the same time, the Commission issued a Further Notice of Proposed Rulemaking seeking comment on coordination parameters relating to space-path and ground-path interference between 17/24 GHz BSS systems and DBS service systems operating in the 17.3–17.8 GHz band.

On September 28, 2007, the Commission, *sua sponte,* released an Order on Reconsideration, 72 FR 60272, October 24, 2007 to provide space station operators additional flexibility to operate full-power space stations at orbital locations offset by up to one degree from an Appendix F location, in instances where there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station. In response to the *17/24 GHz BSS Sua Sponte Recon,* Telesat filed a second petition for reconsideration arguing that the additional flexibility did not resolve issues it raised in its original petition for reconsideration. Telesat reiterates its requests that we impose specific additional conditions on each U.S.-licensed 17/24 GHz BSS space station relating to international coordination. In

particular, Telesat asks us to impose a condition on each U.S. license that allows us to modify the assigned orbital location by more than one degree from an Appendix F location if necessary to facilitate coordination with a non-U.S.-licensed 17/24 GHz BSS space station operator.

Licensing. At the time the Commission issued its *17/24 GHz BSS Report and Order*, there were a number of pending applications for 17/24 GHz BSS space station authorizations. To implement its decisions, the Commission directed the International Bureau to release a public notice after the rules became effective, establishing a deadline for applicants to amend pending applications to conform to the newly adopted rules. The 17/24 GHz BSS rules, as modified by the *17/24 GHz BSS Sua Sponte Recon*, became effective on November 23, 2007. In December 2007, the Bureau released a public notice with instructions for filing conforming amendments. The amended applications that were acceptable for filing were placed on public notice and comments were filed by various parties, not including Telesat. The Bureau subsequently completed processing of all of the applications pending at the time the *17/24 GHz BSS R&O* was released. As of the date of this order, the Bureau has authorized nine space stations in this service.

The *17/24 GHz BSS Report and Order* also adopted a freeze on filing new applications and delegated authority to the Bureau to lift the freeze after, among other things, the newly adopted processing and service rules became effective and the pending applications were amended to conform to the new rules. The Bureau lifted the freeze on new 17/24 GHz BSS applications and requests for market access by non-U.S.-licensed space stations in September 2008. Since that date, a number of entities have filed new applications, including requests for access to the market in the United States, with the Commission. While Telesat has not yet filed a request to access the U.S. market from a Canadian licensed 17/24 GHz BSS space station, one of Telesat's wholly owned subsidiaries, Skynet Satellite Corporation (Skynet), has filed an application to be a U.S.-licensed 17/24 GHz BSS space station operator.

Telesat proposes that the Commission adopt additional blanket ITU coordination conditions for the 17/24 GHz BSS service. For the reasons stated below, we deny Telesat's request as unnecessary.

Telesat's argument concerns the international coordination obligations of U.S.-licensed 17/24 GHz BSS space station operators. Telesat argues that there "may be confusion" among 17/24 GHz BSS applicants regarding their international coordination obligations with non-U.S.-licensed 17/24 GHz BSS operators that have ITU date priority. To mitigate any such confusion, Telesat requests that the Commission attach conditions to any 17/24 GHz BSS authorization requiring U.S. licensees to coordinate with non-U.S-licensed satellite operators that have ITU date priority. In light of our existing ITU coordination rule and our prior statements on this issue, we find Telesat's contention that there "may be confusion" regarding ITU coordination obligations to be unsupported. Thus, we find that any further condition requiring ITU coordination, as proposed by Telesat, is redundant and is otherwise unnecessary as a general matter.

Similarly, Telesat's second proposed condition—that 17/24 GHz BSS space station authorizations are subject to modification to an off-grid location to facilitate coordination with a foreign-licensed satellite operators with ITU priority—is also unnecessary. Section 25.111(b) of the Commission's rules already explicitly provides that "[a]ny radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations." Thus, specifically listing only one theoretical solution to a coordination issue is unnecessary. Further, such a condition might prejudice the Commission's position in a future international coordination. Thus, we concur with Intelsat that such a condition, in addition to being unnecessary, might inject additional uncertainty into the four-degree spacing framework.

While we decline to adopt the additional blanket coordination conditions proposed, Telesat, like any other interested party, may propose conditions relevant to the unique circumstances presented by any specific application. The Commission takes such comments into consideration when reviewing any application and may adjust licensing conditions if circumstances warrant. A party proposing further international coordination conditions—in addition to the standard condition drawn from § 25.111(b) of the Commission's rules—bears the burden of establishing that its proposed condition is required by the facts presented in the particular application at issue. Finally, although we reject Telesat's petition for reconsideration on this point, in coordinating U.S.-licensed satellite networks with satellite networks of other Administrations, we will follow the applicable coordination procedures set out in the ITU Radio Regulations for the particular band segment being coordinated.

The Commission's *DISCO II Order*, 12 FCC Rcd 24094, 62 FR 64167, November 26, 1997, implemented the market-opening commitments made by the United States in the World Trade Organization's (WTO) Agreement on Basic Telecommunications Service (WTO Basic Telecom Agreement). In particular, the *DISCO II Order* established a framework under which the Commission considers requests by operators of non-U.S.-licensed space stations to serve the United States. The Commission's analysis considers the effect on competition in the United States; eligibility and operating requirements; spectrum availability; and national security, law enforcement, foreign policy, and trade concerns.

Consequently, we reject Telesat's contention that our technical and licensing rules do not apply to non-U.S.-licensed 17/24 GHz BSS satellite operators seeking access to the market in the United States. The Commission's space station licensing policy for the 17/24 GHz BSS is predicated upon four-degree orbital spacing between geostationary space stations. The 17/24 GHz BSS service rules allow space station operators to operate full-power space stations at orbital locations offset by up to one degree from an Appendix F location in cases where there are no licensed or previously filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station. This four-degree orbital spacing framework and accompanying offset rules are technical rules equally applicable to non-U.S.-licensed space stations seeking to access the market in the United States. Telesat apparently seeks to exempt non-U.S.-licensed space stations from our technical rules if ITU filings made by the licensing Administration on behalf of these networks precede those made by the United States at nearby orbital locations.

We note, however, our decision here does not preclude non-U.S.-licensed operators from seeking a waiver of any technical rules based on the facts presented in a particular market access request. Further, while our technical rules apply to an application filed before the Commission for access to the market in the United States, our technical rules do not constrain another licensing Administration in the context of ITU coordination with the United

States. In that context, the ITU Radio Regulations govern. Thus, our decision here is limited to the determination that when applying for market access in the United States, non-U.S.-licensed operators must meet the same legal and technical rules as U.S. licensees, and where departures from those rules are sought, the same waiver standards apply.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this Order on Reconsideration *is adopted*.

It is further ordered that Telesat Canada's Petition for Reconsideration filed on September 28, 2007 *is denied*.

It is further ordered that Telesat Canada's Petition for Reconsideration filed on November 21, 2007 *is denied*.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Order on Reconsideration*, including the final regulatory flexibility act certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, *5 U.S.C. 601, et seq.* (1981).

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–6145 Filed 3–15–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 110223163–1180–01]

RIN 0648–XA231

Listing Endangered and Threatened Species: Correction To Codify in the Code of Federal Regulations Endangered Status for Southern Resident Killer Whales

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

ACTION: Final rule; correcting amendment.

SUMMARY: We, NMFS, announce a correcting amendment to the Code of Federal Regulations to identify the Southern Resident killer whale (*Orcinus orca*) distinct population segment (DPS) as an endangered species under the Endangered Species Act of 1973 (ESA).

DATES: Effective March 16, 2011.

FOR FURTHER INFORMATION CONTACT: For further information regarding this correcting amendment contact Steve Stone, NMFS, Northwest Region, 503–231–2317; or Marta Nammack, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background and Correcting Amendment

We listed the Southern Resident killer whale DPS as an endangered species under the ESA on November 18, 2005 (70 FR 69903). That final rule became effective on February 16, 2006, and the species was included in the enumeration of endangered species at 50 CFR 224.101(b). In separate and unrelated rulemaking, we published a final rule on March 6, 2008 (73 FR 12024), to list the North Pacific right whale (*Eubalaena. japonica*) and North Atlantic right whale (*E. glacialis*) as separate endangered species under the ESA. In that more recent rule the Southern Resident killer whale DPS was inadvertently dropped from the enumeration of endangered species at 50 CFR 224.101(b). This correcting amendment remedies that oversight.

Classification

The Assistant Administrator (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment because it is impracticable, unnecessary, and contrary to the public interest. We fully intended the Southern Resident killer whale DPS to be listed as an endangered species under the ESA and expressly stated this intent in the November 2005 final rule (70 FR 69903; November 18, 2005). We also previously provided public notice in the **Federal Register** and considered public comments on the 2004 proposed rule (69 FR 76673; December 22, 2004). Further, this DPS was correctly included in the October 2006 and 2007 issues of the CFR. However, due to a clerical error in unrelated rulemaking on March 6, 2008 (73 FR 12024), the DPS was omitted from the list of endangered species published at 50 CFR 224.101 in the October 2008 and subsequent issues of the CFR. In order to avoid regulatory confusion and ensure continuous protections and enforcement capability for the Southern Resident killer whale, the AA waives the requirement for prior notice and opportunity for public comment.

For the same reasons above, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

It has been determined that this rule is not significant for purposes of Executive Order 12866.

References

Copies of previous **Federal Register** notices and related reference materials are available on the Internet at *http://www.nwr.noaa.gov,* or upon request (*see* **FOR FURTHER INFORMATION CONTACT** section above).

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: March 10, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 224 is corrected by making the following correcting amendment:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

■ 2. In § 224.101, paragraph (b), add "Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not including Southern Resident killer whales placed in captivity prior to listing or their captive born progeny" following "Indus River dolphin (*Platanista minor*);".

[FR Doc. 2011–6137 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110104009–1186–02]

RIN 0648–BA25

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A (waters off the U.S. West Coast) and implementing regulations for 2011, and announces approval of the Area 2A CSP. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) (Councils).

DATES: This rule is effective April 15, 2011. The IPHC's 2011 annual management measures are effective March 16, 2011, except for the measures in section 26, which are effective April 15, 2011. The 2011 management measures are effective until superseded.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting: the International Pacific Halibut Commission, 2320 W. Commodore Way Suite 300, Seattle, WA 98199–1287; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; or Sustainable Fisheries Division, NMFS Northwest Region, 7600 Sand Point Way, NE, Seattle WA 98115. This final rule also is accessible via the Internet at the Federal eRulemaking portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For waters off Alaska, Glenn Merrill, 907–586–7228, e-mail at *glenn.merrill@noaa.gov*; or Peggy Murphy, 907–586–7228, e-mail at *peggy.murphy@noaa.gov;* or, for waters off the U.S. West Coast, Sarah Williams, 206–526–4646, e-mail at *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2011 under the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979).

As provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), may accept or reject, on behalf of the United States, recommendations made by the IPHC in accordance with the Convention (Halibut Act, Section773–773k.). On March 8, 2011, the Secretary of State of the United States, with the concurrence of the Secretary of Commerce, accepted the 2011 IPHC regulations as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773–773k.

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. The Regional Fishery Management Councils may develop and the Secretary may implement regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with approved IPHC regulations. The NPFMC has exercised this authority most notably in developing a suite of halibut management programs that correspond to the three fisheries that harvest halibut in Alaska: the subsistence, sport, and commercial fisheries. In 2010/2011, these programs were revised by regulations recommended by the NPFMC.

On January 5, 2010, NMFS published a final rule implementing a Limited Access System for Guided Sport Charter Vessels in Alaska for halibut in IPHC Regulatory Areas 2C and 3A (75 FR 554). On September 17, 2010, NMFS amended these regulations to revise the method of assigning angler endorsements to charter halibut permits to more closely align each endorsement vessel anglers reported for each vessel that a charter business used to qualify for a charter halibut permit (75 FR 56904).

On January 12, 2010, NMFS published notice that applications would be accepted from persons February 4, 2010, through April 5, 2010, that applied to receive a charter halibut permit under the limited access program for the guided charter fishery for halibut in Area 2C and Area 3A (75 FR 1595). Beginning February 1, 2011, Area 2C and Area 3A charter business operators were required to have a charter halibut permit on board a vessel if charter vessel anglers are catching and retaining halibut

On February 7, 2011, NMFS published a final rule amending recordkeeping and reporting requirements for halibut charter vessels operating in IPHC Areas 2C and 3A (76 FR 6567). This rule improves consistency between State of Alaska and Federal regulations regarding the submission of charter logbook data sheets, logbook recording requirements, and the definition of a fishing week.

Changes in subsistence and sport halibut fishery management measures are codified at 50 CFR 300. Commercial halibut fisheries in Alaska operate within the Individual Fishing Quota (IFQ) Program and Community Development Quota (CDQ) Program (50 CFR part 679), and through area-specific catch sharing plans. Regulations for a commercial and sport fishery Halibut CSP in Areas 2C and 3A are being developed pursuant to the NPFMC authority under the Halibut Act.

The PFMC also exercises authority in a CSP allocating halibut among groups of fishermen in Area 2A; off the coasts of Washington, Oregon, and California. The CSP allocates the Area 2A catch limit among treaty Indian and non-Indian harvesters, and non-Indian commercial and sport harvesters. The treaty Indian group includes Tribal commercial and Tribal ceremonial and subsistence fisheries. The Secretary implemented the Area 2A CSP recommended by the PFMC in 1995.

Each year between 1995 and the present, the PFMC has adopted minor revisions to the plan to account for needs of the fisheries. These revisions are implemented in regulations for Area 2A through annual rule making and annual IPHC review and recommendation of management measures for Secretarial review. The Area 2A regulations are part of the IPHC annual management measures and are superseded each year by new implementing regulations.

The NPFMC implemented a CSP among commercial IFQ and CDQ halibut fisheries in IPHC Areas 4C, 4D and 4E (Area 4) through rulemaking, and the Secretary approved the plan on March 20, 1996 (61 FR 11337). The Area 4 CSP regulations were codified in the Code of Federal Regulations (50 CFR 300.65) and amended through rule making on March 17, 1998 (63 FR 13000). New annual regulations pertaining to the Area 4 CSP also may be implemented through IPHC review and recommendation for Secretarial review.

Publication of this final rule announces that the U.S. Secretary of State has accepted the annual management measures recommended by the IPHC, implements Area 2A regulations supporting annual management measures recommended by IPHC, implements the Area 2A CSP, and makes minor changes to the codified halibut regulations. The proposed rule for the Area 2A CSP was published on January 18, 2011 (76 FR 2871).

Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2011 IPHC annual management measures are published in the **Federal Register** to provide notice of their immediate regulatory effect, and to inform persons subject to the regulations of the restrictions and requirements. NMFS could implement more restrictive regulations for the sport fishery for halibut or components of it; therefore, anglers are advised to check the current Federal or IPHC regulations prior to fishing.

The IPHC held its annual meeting in Victoria, British Columbia, Canada, January 25–28, 2011, and adopted regulations for 2011. The changes to the previous IPHC regulations (75 FR 13024, March 19, 2010) include:

1. New halibut catch limits in all regulatory areas;
2. New commercial halibut fishery opening dates;
3. Removal of option to use LORAN coordinates in logbook entries;
4. Adoption of the revised Catch Sharing Plan (CSP) for Area 2A;
5. New maximum size limit on the halibut retained on board a charter vessel fishing in Regulatory Area 2C measuring no more than 37 inches; and
6. New retention requirement of the entire carcass of a halibut filleted on board a charter vessel fishing in Area 2C until all filets are offloaded.

Non-substantive changes to the previous IPHC regulations include minor editorial and grammatical changes in the regulations to improve accuracy and clarity.

Catch Limits

The IPHC recommended to the governments of Canada and the United States catch limits for 2011 totaling 41,070,000 pounds (18,172 mt), an 18.9 percent reduction from the 2010 catch limit. The decline of the stock is attributed to natural declines in recruitment and lower growth rates, and higher-than-target harvest rates in most areas has motivated this change in the harvest recommendations. The 1999 and 2000 year classes are estimated to be above average but the lower growth rates of fish in recent years means that these year classes are recruiting to the exploitable stock very slowly.

The IPHC staff reported on the 2010 assessment of the Pacific halibut stock that estimated coastwide biomass, with apportionment to regulatory biomass based on the data from the annual IPHC standardized stock assessment survey. The IPHC recommended a 21.5 percent harvest rate for Areas 2A through Area 3A, and a harvest rate of 16.1 percent for Areas 3B, 4A, 4B and 4CDE. Catch limits adopted for 2011 were lower in the central regions of the stock (Areas 2C and 3) but significant recent reductions in catch limits for Areas 2A and 2B appear to have resulted in improvements to stock condition in those areas. Concern exists over continued declining catch rates in most areas and IPHC staff recommended aggressive action to reduce harvests. In particular, a shift in the harvest control rule implemented the full reductions in catch limits identified by the stock assessment, rather than the partial (50 percent) reductions used in previous years.

The IPHC adopted the staff recommendations for catch limits in 2011. Catch limits adopted for Areas 2A and 2B in 2011 were approximately 11 percent, and 2 percent higher, respectively, than in 2010. Catch limits adopted for Areas 2C, 3A, and 3B in 2011 were approximately 47 percent, 28 percent, and 24 percent lower, respectively, than in 2010. Catch limits in Areas 4A, 4B, and 4 CDE were approximately 3 percent, 1 percent, and 4 percent higher, respectively, than in 2010.

Commercial Halibut Fishery Opening Dates

The opening date for the Tribal commercial fishery in Area 2A and for the commercial halibut fisheries in Areas 2B through 4E is March 12, 2011. The date takes into account a number of factors, including tides, timing of halibut migration and spawning, marketing for seasonal holidays, and interest in getting product in to the processing plants before the herring season opens. The closing date for the halibut fisheries is November 15, 2011.

In the Area 2A directed fishery, each fishing period shall begin at 0800 hours and terminate at 1800 hours local time on June 29, July 13, July 27, August 10, August 24, September 7, and September 21, 2011, unless the IPHC specifies otherwise. These 10-hour openings will occur until the quota is taken and the fishery is closed.

Remove Option To Use LORAN Coordinates in Logbook

This final rule removes regulations paragraph 16(2)(c) in the 2011 Pacific Halibut Fishery Regulations providing an option to use LORAN (Long Range Navigation) coordinates in the British Columbia Integrated Groundfish Fishing Log provided by the Canada's Department of Fisheries and Oceans. The LORAN–C network used for maritime navigation has been decommissioned and is no longer operational. Removing this reference is a housekeeping measure.

New Maximum Size Limit of No More Than 37 Inches for the Halibut Retained Onboard a Charter Vessel Fishing in Regulatory Area 2C

This final rule would prohibit a person onboard a charter vessel referred to in 50 CFR 300.65 and fishing in Area 2C from taking or possessing any halibut, with head on, that is longer than 37 inches (93.9 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail.

The IPHC recognizes the role of the NPFMC to develop policy and regulations that allocate the Pacific halibut resource among fishermen in and off of Alaska, and that NMFS has developed numerous regulations to support the NPFMC's goals of limiting charter harvests over the past several years. The IPHC specifically recommended this additional management measure be implemented in the Area 2C charter fishery based on

concerns that the stated harvest policy of the United States for the guided charter fishery, the guideline harvest level (GHL), would be exceeded without additional restrictions on the charter fleet. The IPHC concluded that charter fishery harvests in excess of the GHL would interfere with the IPHC's overall harvest objectives in Area 2C.

The GHL was recommended by the NPFMC in February 2000, after several years of debate and refinement. NMFS published a final rule implementing the GHL on August 8, 2003 (68 FR 47256). The GHL establishes a pre-season estimate of the acceptable annual harvests for the guided charter fishery in Areas 2C and 3A. The GHLs are established as a total maximum poundage, which is responsive to annual fluctuations in abundance. For example, in the event of a reduction in either area's halibut biomass, as determined by the IPHC, the area GHL is reduced incrementally in a stepwise fashion in proportion to the reduction.

Regulations at § 300.65(c)(1) specify the GHLs based on the total constant exploitation yield (CEY) that is established annually by the IPHC. In each year since 2004, the guided charter halibut fishery has exceeded the GHL in Area 2C. During 2004 through 2007, the GHL was 1,432,000 lb. During that time period, guided charter harvests were approximately 1,750,000 lb in 2004, 1,952,000 lb in 2005, 1,804,000 lb in 2006, and 1,918,000 lb in 2007. In 2008, the GHL was 931,000 lb and guided charter harvests were approximately 1,999,000 lb. In 2009 the GHL was 788,000 pounds and the guided charter harvest was approximately 1,245,000 lb. In 2010, the GHL was 788,000 lb. The Alaska Department of Fish and Game (ADF&G) provided the IPHC with a preliminary estimate of the guided charter harvest in 2010 of 46,816 fish yielding 1,249,000 lb (November 1, 2010, letter from ADF&G to the IPHC). In 2011, the total CEY is 5,390,000 lb (2,445 mt) in Area 2C. The corresponding GHL is 788,000 lb (357.4 mt) in Area 2C.

The IPHC is aware that guided halibut charter harvests in Area 2C in 2011 are likely to exceed the 788,000 lb GHL based on the well-established trend of charter harvests since 2004, and the demonstrated removals under existing regulations. Guided charter harvests have exceeded the GHL since 2004, even though some additional limitations have been placed on the guided charter fishery to constrain harvests within the GHL. Key regulatory measures include: (1) Effective in 2007, maintaining a two-fish daily bag limit provided that at least one of the harvested halibut had a head-on length of no more than 32 inches (81.3 cm) (June 4, 2007, 72 FR 30714); and (2) effective in 2009, a one-fish daily bag limit that superseded the June 4, 2007, two-fish with maximum size rule, a prohibition on harvest by the charter vessel guide and crew, and a line limit equal to the number of charter vessel anglers onboard, not to exceed six lines (May 6, 2009, 74 FR 21194).

In addition, the NPFMC recommended a Catch Sharing Plan (CSP) in October 2008. The CSP would replace the current GHL and establish specific allocations of halibut harvest between the guided sport charter and commercial setline fisheries in Area 2C and 3A. Under the CSP, the IPHC would annually establish one combined charter and commercial catch limit to which pre-specified percentages would apply. Multiplying the specified percentage by the combined catch limit would result in a specific catch limit for each sector. Using a nondiscretionary process specified annually in the IPHC annual management measures, ranges of the charter sector catch limit could trigger changes in the guided sport halibut bag and size limit. However, NMFS has not yet published proposed or final regulations for the CSP. The CSP will not be effective during the 2011 charter halibut season. Therefore, the IPHC determined that its recommended maximum size limit in Area 2C was necessary to prevent excess halibut harvest by charter vessel anglers as an immediate but interim measure until the CSP for this fishery could be implemented.

The IPHC anticipated that the CSP may not be implemented in 2011. During its 2010 annual meeting in Seattle, WA, (January 26–29, 2010), the IPHC requested IPHC staff to develop options for control of the charter halibut fisheries should the CSP not be implemented in a timely manner. Prior to the 2011 annual meeting, IPHC staff provided a suite of potential control measures based largely on existing methods considered by the NPFMC for limiting charter harvests. After discussions with IPHC Commissioners, the IPHC staff review of these measures was shared with NMFS and ADF&G staff prior to release to the public. The IPHC staff review was provided to the IPHC Commissioners and IPHC Advisory Bodies in documents prepared for the IPHC's 2011 annual meeting. IPHC Commissioners also received multiple proposals prior to the 2011 meeting recommending that the IPHC implement harvest control measures to restrain guided sport halibut harvest in Area 2C to the projected 2011 GHL of 788,000 pounds.

The IPHC sought to meet several objectives with the maximum size limit for charter vessel harvests in Area 2C:

1. Ensure measures meet IPHC conservation goals;
2. Maintain the charter harvest within the GHL, the charter harvest policy developed by the NPFMC and implemented in Federal regulations;
3. Minimize season disruption to the extent practicable;
4. Promote equity of access and applicability to all charter anglers in Area 2C;
5. Ensure measures result in enforceable accountability; and
6. Simplify application by basing measures on previous analyses where possible.

The IPHC's recommendation to limit charter harvests in Area 2C to one fish of no more than 37 inches would be likely to meet the multiple objectives established by the IPHC. Without additional regulations restricting charter harvest in 2011, charter harvest is likely to exceed the GHL and result in total harvest exceeding the total CEY. Guided charter angler catch in 2010 was 62 percent over the GHL. NMFS plans no additional charter restrictions for the 2011 fishery. Therefore, the IPHC concluded that additional restrictions were necessary to limit that charter harvest to the GHL and achieve the IPHC's overall conservation objective for Area 2C.

A 37-inch maximum size limit would be likely to maintain guided charter harvests within the GHL. For example, assuming the same number of fish would be caught in 2011 as in 2010, 46,816 fish would be caught. A 37-inch halibut is equal to 17.1 pounds net weight using IPHC length-weight ratios. Multiplying 46,816 fish × 17.1 lb = 800,554 lb of guided charter harvest. The 2011 Area 2C GHL is 788,000 lb.

The 37-inch length limit was selected by the IPHC to reduce the harvest of halibut in Area 2C (Southeast Alaska) to the GHL. The calculation used to determine the size limit was based on an assumption that the 2011 harvest (in number of fish) would be slightly less than the 2010 projection, and that each fish harvested would be of a size equal to the maximum limit. The exact size of each fish harvested, and therefore the average weight of all guided charter harvests cannot be precisely predicted. The IPHC's recommendation is precautionary, but should result in total guided angler harvests at the GHL if the average size of fish harvested is 37 inches and approximately the same number of fish are harvested in 2011 as in 2010. Moreover, the actual numbers of halibut that will be harvested in the

2011 charter fishery cannot be precisely predicted. For example, if the total number of halibut harvested in 2011 substantially exceeds the 2010 harvests, then the GHL could be exceeded even if the average size of halibut harvested in the guided charter fishery in 2011 is less than 37 inches.

The 37-inch maximum size limit minimizes season disruption relative to other measures such as limiting the guided charter season. Limits on season length would likely be more disruptive to charter anglers and businesses than limiting the maximum retainable size of halibut. Most charter businesses have established bookings well in advance of the 2011 season, and any change in season length would reduce total anglers and revenues. The 37-inch maximum size limit promotes equitable access to the halibut resource and is applicable to all charter anglers in Area 2C, whereas season length restrictions might disproportionately adversely affect specific anglers and businesses.

The 37-inch maximum size limit is based on measures considered and proposed to constrain guided charter harvests under the NPFMC's recommended CSP. The IPHC staff and Commissioners considered the analysis and methods developed by the NPFMC when recommending the 37-inch limitation. The maximum size limit recommended by the IPHC uses the same algorithm described in the NPFMC's CSP to establish a maximum size limit for the guided charter fishery under conditions of lower biomass.

Area 2C Carcass Retention

Current regulations prohibit the filleting, mutilation or other disfigurement of sport-caught halibut that would prevent the determination of the size or number of halibut possessed or landed. In Southeast Alaska Area 2C, the IPHC recommended that a person onboard a charter vessel who possesses filleted halibut must also retain the entire carcass, with head and tail connected as a single piece, onboard the vessel until all the fillets are offloaded. This change is intended to facilitate enforcement of the 37-inch maximum size limit and accounting of each charter vessel angler's halibut bag limit.

Pacific Fishery Management Council's Area 2A Catch Sharing Plan and Codified Regulations

In addition to implementing the IPHC recommendations, this rule makes several changes to the Pacific Fishery Management Council's Area 2A Catch Sharing plan and NMFS' codified regulations.

Changes to Codified Regulations for Area 2A

This final rule updates and consolidates information regarding areas closed to halibut fishing in Area 2A. Coordinates for the boundaries of closed areas that are described in the groundfish regulations are removed from the halibut regulations at 50 CFR 300.63, and are replaced with references to the groundfish regulations. This includes the Rockfish Conservation Area (RCA), in which participants in the non-Tribal directed commercial halibut fishery are prohibited from fishing. The eastern and western boundaries of the RCA vary along the coast. The coordinates in the halibut regulations were intended to be the same as those in the groundfish regulations, but the groundfish regulations are updated more regularly. This change reduces the possibility that there will be unintended discrepancies between the descriptions of the depth contours in the halibut and groundfish regulations. In addition, this change will make it easier for participants in the fishery and law enforcement officers to access the definitions of the depth contours, as that information will be in one location in the regulations and many of the participants in the halibut fishery and enforcement officers also work with the groundfish regulations.

In addition, this rule updates references to the groundfish regulations in the codified halibut regulations to reflect changes made to the groundfish regulations to implement the individual quota program for the trawl fishery.

Finally, this final rule includes a change to the codified regulations at 50 CFR 300.64 to add "receipt and possession" to the list of management measures that treaty Indian fishers must comply with. This change makes the codified regulations consistent with the IPHC regulations, and is intended to correct an inadvertent omission.

Changes to the Area 2A Catch Sharing Plan; Annual Management Measures

This final rule approves the Catch Sharing Plan as revised according to the recommendations of the Pacific Council. Changes for 2011 include moving two percent of the subarea quota for the Oregon Central Coast subarea from the spring fishery to the summer fishery, updating references to the groundfish regulations to reflect changes made to those regulations, and modifying references regarding the closed areas to reflect changes to the codified halibut regulations as described above. The changes to the proposed annual management measures made as part of this final rule are necessary to implement the IPHC's decision regarding the Area 2A total allowable catch (TAC).

Incidental Halibut Retention in the Primary Sablefish Fishery North of Pt. Chehalis, WA

According to the Area 2A CSP, incidental halibut retention will be allowed in the primary directed sablefish fishery north of Point Chehalis, WA, when the Area 2A total allowable catch (TAC) is at least 900,000 lb (408.2 mt) and the resulting Washington sport allocation is at least 224,100 lb (101.7 mt) leaving a minimum of 10,000 lb (4.5 mt) available to this incidental fishery. The 2011 TAC is 910,000 lb (412 mt), resulting in a Washington sport allocation of 216,489 lb (98.2 mt), which is less than the required 10,000 lb (4.5 mt) minimum. Therefore incidental retention of halibut is not permitted in the primary sablefish fishery in 2011.

Area 2A Catch Sharing Plan and Annual Regulations; Comments and Responses

NMFS accepted comments through February 2, 2011, on the proposed rule for the Area 2A CSP and annual regulations and received four public comments. One letter from an individual commenting on Atlantic halibut, which does not pertain to the subject rule; one letter from the Department of Interior stating they had no comments; and one comment letter each from Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW) recommending season dates for halibut sport fisheries in each State.

Comment 1: The WDFW held a public meeting following the final TAC recommendations by the IPHC to review the results of the 2010 Puget Sound halibut fishery, and to develop season dates for the 2011 sport halibut fishery. Based on the 2011 Area 2A total allowable catch of 910,000 lb (412.7 mt), the halibut quota for the Puget Sound sport fishery is 58,155 lb (26.3 mt.) Because the catch in this area exceeded the quota in 2008, 2009 and 2010 WDFW will continue to use the highest catch rate seen over the last 5 years to determine the number of days available to the fishery. WDFW recommends that the regions within the Puget Sound sport halibut fishery be open: in the Eastern Region from May 5–29, Thursday through Saturday, and May 26–29, Friday through Sunday; in the Western Region from May 26–29, Thursday through Sunday, and from June 2–18, Thursday through Saturday.

Response: NMFS agrees with WDFW's recommended Puget Sound season dates. These dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates with this final rule.

Comment 2: ODFW held a public meeting following the final TAC decision by the IPHC to gather comments on the open dates for the recreational all-depth fishery in Oregon's Central Coast Subarea. Since 2004, the number of open fishing days that could be accommodated in the spring fishery has been roughly constant. The catch limit for this sub-area's spring season will be 115,578 lb (52.4 mt) in 2011, based on the IPHC's 2011 TAC for Area 2A. Because of the increased TAC for 2011, ODFW recommends setting a Central Coast all-depth fishery of 12 days. ODFW recommends the following days for the spring fishery, within this subarea's parameters for a Thursday-Saturday season and with weeks of adverse tidal conditions skipped: regular open days of May 12, 13, 14, 26, 27, 28, and June 2, 3, 4, 9, 10, and 11; back-up open days of June 23, 24, 25, and July 7, 8, 9, 21, 22, and 23. For the summer fishery in this subarea, ODFW recommended following the CSP's parameters of opening the first Friday in August, with open days to occur every other Friday-Sunday, unless modified in-season within the parameters of the CSP. Under the CSP, the 2011 summer all-depth fishery in Oregon's Central Coast Subarea would occur: August 5, 6, 19, 20, and September 2, 3, 16, 17, 30, and October 1, 14, 15, 28, and 29.

Response: NMFS agrees with ODFW's recommended Central Coast season dates. These dates will help keep this area within its quota, while providing for angler enjoyment and participation. NMFS, therefore implements the dates via this final rule.

Comment 3: The commenter asked when attention would be paid to Atlantic halibut.

Response: This rule does not relate to Atlantic Halibut and therefore NMFS has no comment.

Changes From the Proposed Rule

On January 18, 2011, NMFS published a proposed rule on changes to the CSP and recreational management measures for Area 2A (76 FR 2871). The final catch limits and total allowable catch numbers were not available until January 28, 2011, which was after the proposed rule needed to be drafted and sent to the Office of the Federal Register for timely publication. The provisions in the proposed rule were based on the preliminary estimate of the 2A TAC of 860,000 lb. The final 2A TAC is 910,000 lb, which is higher than the preliminary estimate for 2011, but lower than the 2009 2A TAC of 950,000 lb. Most of the changes in this final rule are updates to subarea catch limits based on the final TAC. There are no other substantive changes from the proposed rule.

Annual Halibut Management Measures

The following annual management measures for the 2011 Pacific halibut fishery are those recommended by the IPHC and accepted by the Secretary of State, with the concurrence of the Secretary. The sport fishing regulations for Area 2A, included in paragraph 26, are consistent with the measures adopted by the IPHC and approved by the Secretary of State, but were developed by the Pacific Fishery Management Council and promulgated by the United States under the Halibut Act.

1. Short Title

These Regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in Subarea 2A–1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social and ceremonial purposes in British Columbia.

(8) Sections 25 to 28 apply to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

3. Definitions

(1) In these Regulations,

(a) "Authorized officer" means any State, Federal, or Provincial officer authorized to enforce these Regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Wildlife Troopers (AWT), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) "Authorized clearance personnel" means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) "Charter vessel" means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) "Commercial fishing" means fishing, the resulting catch of which is sold or bartered; or is intended to be sold or bartered, other than (i) sport fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(e) "Commission" means the International Pacific Halibut Commission;

(f) "Daily bag limit" means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) "Fishing" means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) "Fishing period limit" means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) "Land" or "offload" with respect to halibut, means the removal of halibut from the catching vessel;

(j) "License" means a halibut fishing license issued by the Commission pursuant to section 4;

(k) "Maritime area", in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) "Net weight" of a halibut means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2 percent deduction for ice and slime and a 10 percent deduction for the head;

(m) "Operator", with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) "Overall length" of a vessel means the horizontal distance, rounded to the

nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) "Person" includes an individual, corporation, firm, or association;

(p) "Regulatory area" means an area referred to in section 6;

(q) "Setline gear" means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) "Sport fishing" means all fishing other than (i) commercial fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(s) "Tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) "VMS transmitter" means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.[1]

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both:

(a) The directed commercial fishery during the fishing periods specified in paragraph (2) of section 8; or

(b) The incidental catch fishery during the salmon troll fishery specified in paragraph (3) of section 8.

(5) A license issued in respect to a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect to a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or the documentation is changed.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, CFR part 904.

5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

(a) Closed areas;

(b) Fishing periods;

(c) Fishing period limits;

(d) Gear restrictions;

(e) Recreational bag limits;

(f) Size limits; or

(g) Vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

6. Regulatory Areas

The following areas shall be regulatory areas (*see* Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the States of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′56″ N. latitude, 136°38′26″ W. longitude) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. latitude, 155°35′00″ W. longitude) to Cape Ikolik (57°17′17″ N. latitude, 154°47′18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. latitude, 154°08′44″ W. longitude), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. latitude, 164°20′00″ W. longitude) and south of 54°49′00″ N. latitude in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. longitude and south of 56°20′00″ N. latitude;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. latitude;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10

[1] Call NOAA Enforcement Division, Alaska Region, at 907–586–7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

which are east of 171°00′00″ W. longitude, south of 58°00′00″ N. latitude, and west of 168°00′00″ W. longitude;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. longitude; and

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. longitude, and south of 65°34′00″ N. latitude.

7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to November 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed commercial fishery [2] shall begin at 0800 hours and terminate at 1800 hours local time on June 29, July 13, July 27, August 10, August 24, September 7, and September 21 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on March 12 and 1200 hours local time on November 18.

(4) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 12 and terminate at 1200 hours local time on November 18, unless the Commission specifies otherwise.

(5) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 18.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved in accordance with paragraph (6).

(9) No person shall possess halibut on board a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00′00″ N. latitude in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. latitude, 164°55′42″ W. longitude) to a point at 56°20′00″ N. latitude, 168°30′00″ W. longitude; thence to a point at 58°21′25″ N. latitude, 163°00′00″ W. longitude; thence to Strogonof Point (56°53′18″ N. latitude, 158°50′37″ W. longitude); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″ N. latitude and 54°49′00″ N. latitude are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table:

CATCH LIMIT IN NET WEIGHT BY REGULATORY AREA

Regulatory area	Catch limit—net weight	
	Pounds	Metric tons
2A: directed commercial, and incidental commercial catch during salmon troll fishery	159,380	72.3
2B [3]	7,650,000	3,469.4
2C	2,330,000	1,056.7
3A	14,360,000	6,512.5
3B	7,510,000	3,405.9
4A	2,410,000	1,093.0
4B	2,180,000	988.7
4C	1,690,000	766.4
4D	1,690,000	766.4

[2] The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by NMFS and published in the **Federal Register.**

CATCH LIMIT IN NET WEIGHT BY REGULATORY AREA—Continued

Regulatory area	Catch limit—net weight	
	Pounds	Metric tons
4E	340,000	154.2

[3] Area 2B includes the combined commercial and sport catch limits which will be allocated by DFO.

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (3) of section 8 will be promulgated by NMFS and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 18, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all Individual Fishing Quotas (IFQ) and all CDQs issued by NMFS have been taken, or November 18, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

Area 2B includes combined commercial and sport catch limits which will be allocated by DFO[3].

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall length (in feet)	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that:

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by:

(a) Hook straightening;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

(2) Except that paragraph (1) shall not prohibit the possession of halibut on board a vessel that has been brought aboard to be measured to determine if the minimum size limit of the halibut is met and, if sublegal-sized, is promptly returned to the sea with a minimum of injury.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except

that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Area 4C or 4D or 4E and lands its total annual halibut catch at a port within Area 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed, is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR sections 679.28(f)(3), (4) and (5); and

(b) The operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800–304–4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations. The operator of a vessel fishing in waters in and off Alaska must use one of the following logbooks: The Groundfish/IFQ Daily Fishing Longline and Pot Gear Logbook provided by NMFS; the Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association; the Alaska Department of Fish and Game (ADF&G) longline-pot logbook; or the logbook provided by IPHC. The operator of a vessel fishing in Area 2A must use either the Washington Department of Fish and Wildlife (WDFW) Voluntary Sablefish Logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the State (ADF&G, WDFW, Oregon Department of Fish and Wildlife, or California Department of Fish and Game) or Tribal vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after 0000 (midnight) local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut

fishery during the salmon troll season in Area 2A defined in paragraph (3) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the DFO vessel registration number;

(b) The date(s) upon which the fishing gear is set and retrieved;

(c) The latitude and longitude coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be:

(a) Maintained on board the vessel;

(b) Retained for a period of two years by the owner or operator of the vessel;

(c) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) mailed to the DFO (white copy) within seven days of offloading; and

(f) mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut caught in Area 2A from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed, except that this paragraph shall not prohibit the possession on board a vessel of:

(a) Halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR part 679;

(b) Fillets from halibut offloaded in accordance with section 17 that are possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload [4]; and

(c) Halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on Federal catch reports: date of offload; name of vessel; vessel number (State, Tribal or Federal, not IPHC vessel number); scale weight obtained at the time of offloading, including the scale weight (in pounds) of halibut purchased by the registered buyer, the scale weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the scale weight of halibut (in pounds) retained for personal use or for future sale, and the scale weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on State fish tickets: The date of offload; vessel number (State, Tribal or Federal, not IPHC vessel number); total weight obtained at the time of offload including the weight (in pounds) of halibut purchased; the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits; the weight of halibut (in pounds) retained for personal use or for future sale; and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the State fish tickets for the Area 2A fisheries as referred to in paragraph (6) must additionally record whether the halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraph (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings in accordance with NMFS regulation published at 50 CFR part 679.

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date; locality; name of vessel; the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased, pounds in excess of IVQs, pounds retained for personal use, and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor, the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (11).

(14) No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency.

DFO has more restrictive regulations; therefore, section 17 paragraph (2)(b) does not apply to fish caught in Area 2B or landed in British Columbia.[4]

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations [4] published at 50 CFR Section 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or

[4] Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished, even if some of the catch occurred earlier in a different area.

4D may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel as required by NMFS regulations published at 50 CFR Section 679.7(f)(4); or has an operational VMS on board actively transmitting in all regulatory areas fished and does not possess at any time more halibut on board the vessel than the IFQ permit holders on board the vessel have cumulatively available for any single Area 4 regulatory area fished; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined in the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(2) No person shall possess halibut taken with any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined by the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's State license number; or

(b) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery shall catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either:

(a) Made a landing and completely offloaded its catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(8) No vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery may be used to catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either:

(a) Made a landing and completely offloaded its catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these Regulations, a person may retain, possess and dispose of halibut taken with trawl gear only as authorized by Prohibited Species Donation regulations of NMFS.

20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

21. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) May be retained for personal use; or

(b) May be sold only if the halibut is caught during commercial halibut fishing and complies with the other commercial fishing provisions of these Regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by State, Provincial, or Federal regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in Subarea 2A–1 by members of United States treaty Indian Tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. latitude and east of 125°44′00″ W. longitude, and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in Subarea 2A–1 by the treaty Indian Tribes.

(4) Regulations in paragraph (3) of this section that apply to State fish tickets apply to Tribal tickets that are authorized by Washington Department of Fish and Wildlife.

(5) Section 4 (Licensing Vessels for Area 2A) does not apply to commercial fishing for halibut in Subarea 2A–1 by treaty Indian Tribes.

(6) Commercial fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from March 12 through November 18, or until 293,200 pounds (133.0 metric tons) net weight is taken, whichever occurs first.

(7) Ceremonial and subsistence fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 25,300 pounds (11.5 metric tons) net weight.

23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by NMFS and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

24. Aboriginal Groups Fishing for Food, Social and Ceremonial Purposes in British Columbia

(1) Fishing for halibut for food, social and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the Fisheries Act of Canada and regulations as amended from time to time.

25. Sport Fishing for Halibut—General

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(3) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(4) No person may possess halibut on a vessel while fishing in a closed area.

(5) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(6) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

(7) The operator of a charter vessel shall be liable for any violations of these Regulations committed by a passenger aboard said vessel.

26. Sport Fishing for Halibut—Area 2A

(1) The total allowable catch of halibut shall be limited to:

(a) 216,489 pounds (98.2 metric tons) net weight in waters off Washington; and

(b) 187,506 pounds (85.0 metric tons) net weight in waters off California and Oregon.

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the in-season actions in 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 58,155 pounds (26.3 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is May 5–May 29, and the fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is May 26–June 18, 3 days a week (Thursday through Saturday), except that the fishery will also be open in both areas on Sunday, May 29, 2011.

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N. lat.), is 108,792 pounds (49.3 mt).

(i) The fishing seasons are:

(A) Commencing on May 12 and continuing 2 days a week (Thursday and Saturday) until 108,792 pounds (49.3 mt) are estimated to have been taken and the season is closed by the Commission or until May 28.

(B) If sufficient quota remains the fishery will reopen on June 2 in the entire north coast subarea, continuing 2 days per week (Thursday and Saturday) until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 108,792 pounds (49.3 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After May 28, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after May 28 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(*1*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British

Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*2*) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The 30-fm depth contour is defined in groundfish regulations at 50 CFR 660.71(e).

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.), is 43,500 pounds (19.7 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N. lat. south to 46°58.00′ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N.lat, 124°37.03′ W. long;

(2) 47°25.67′ N. lat, 124°34.79′ W. long;

(3) 47°12.82′ N. lat, 124°29.12′ W. long;

(4) 46°58.00′ N. lat, 124°24.24′ W. long.

The south coast subarea quota will be allocated as follows: 41,500 pounds (18.8 mt) for the primary fishery and 2,000 pounds (0.9 mt) for the nearshore fishery. The primary fishery commences on May 1 and continues 2 days a week (Sunday and Tuesday) until May 17. Beginning on May 22 the primary fishery will be open 1 day per week (Sunday). Beginning on May 29 the primary fishery will be open 2 days per week (Sunday and Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 1 and continues seven days per week. Subsequent to closure of the primary fishery the nearshore fishery is open seven days per week, until 43,500 pounds (19.7 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.) and Cape Falcon, OR (45°46.00′ N. lat.), is 15,418 pounds (6.9 mt).

(i) The fishing season commences on May 5, and continues 3 days a week (Thursday, Friday and Saturday) until 10,793 pounds (4.9 mt) are estimated to have been taken and the season is closed by the Commission or until July 17, whichever is earlier. The fishery will reopen on August 5 and continue 3 days a week (Friday through Sunday) until 4,625 lb (2.1 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each State in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, when halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.), is 172,505 pounds (78.2 mt).

(i) The fishing seasons are:

(A) The first season (the "inside 40-fm" fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon "inside 40-fm" fishery (13,800 pounds (6.25 mt)) or any in-season revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined at 50 CFR 660.71(k).

(B) The second season (spring season), which is for the "all-depth" fishery, is open on May 12, 13, 14, 26, 27, 28, June 2, 3, 4, 9, 10 and 11. The projected catch for this season is 115,578 pounds (52.4 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: June 23, 24, 25, July 7, 8, 9, 21, 22 and 23. If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth"

fishery, will be open on August 5, 6, 19, 20 and September 2, 3, 16, 17, 30, October 1, 14, 15, 28, 29 or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 158,705 lb (71.9 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 6. If, after this date, an amount greater than or equal to 60,000 pounds (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning August 12 and ending October 31. If after September 5, an amount greater than or equal to 30,000 pounds (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 9 and 10, and ending October 31. After September 5, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at 50 CFR 660.70(f).

(f) The area south of Humbug Mountain, Oregon (42°40.50′ N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 5,625 pounds (2.5 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

27. Sport Fishing for Halibut—Area 2B

(1) In all waters off British Columbia: [5]

(a) The sport fishing season is from February 1 to December 31;

(b) the daily bag limit is two halibut of any size per day per person.

(2) In British Columbia, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(3) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

[5] DFO could implement more restrictive regulations for the sport fishery, therefore anglers are advised to check the current Federal or Provincial regulations prior to fishing.

28. Sport Fishing for Halibut—Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E

(1) In waters in and off Alaska: [6]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person unless a more restrictive bag limit applies in Federal regulations at 50 CFR 300.65; and

(c) No person may possess more than two daily bag limits.

(2) No person on board a charter vessel referred to in 50 CFR 300.65 and fishing in Regulatory Area 2C shall take or possess any halibut that:

(a) With head on, is longer than 37 inches (93.9 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 3; and

(b) If the halibut is filleted the entire carcass, with head and tail connected as a single piece, must be retained on board the vessel until all fillets are offloaded.

(3) In Convention waters in and off Alaska, no person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, halibut that has been filleted, mutilated, or otherwise disfigured in any manner, except that

(a) Each halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with skin on all pieces; and

(b) Halibut in excess of the possession limit in paragraph (1)(c) of this section may be possessed on a vessel that does not contain sport fishing gear, fishing rods, hand lines, or gaffs.

29. Previous Regulations Superseded

These Regulations shall supersede all previous regulations of the Commission, and these Regulations shall be effective each succeeding year until superseded.

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[6] NMFS could implement more restrictive regulations for the sport fishery or components of it, therefore, anglers are advised to check the current Federal or State regulations prior to fishing.

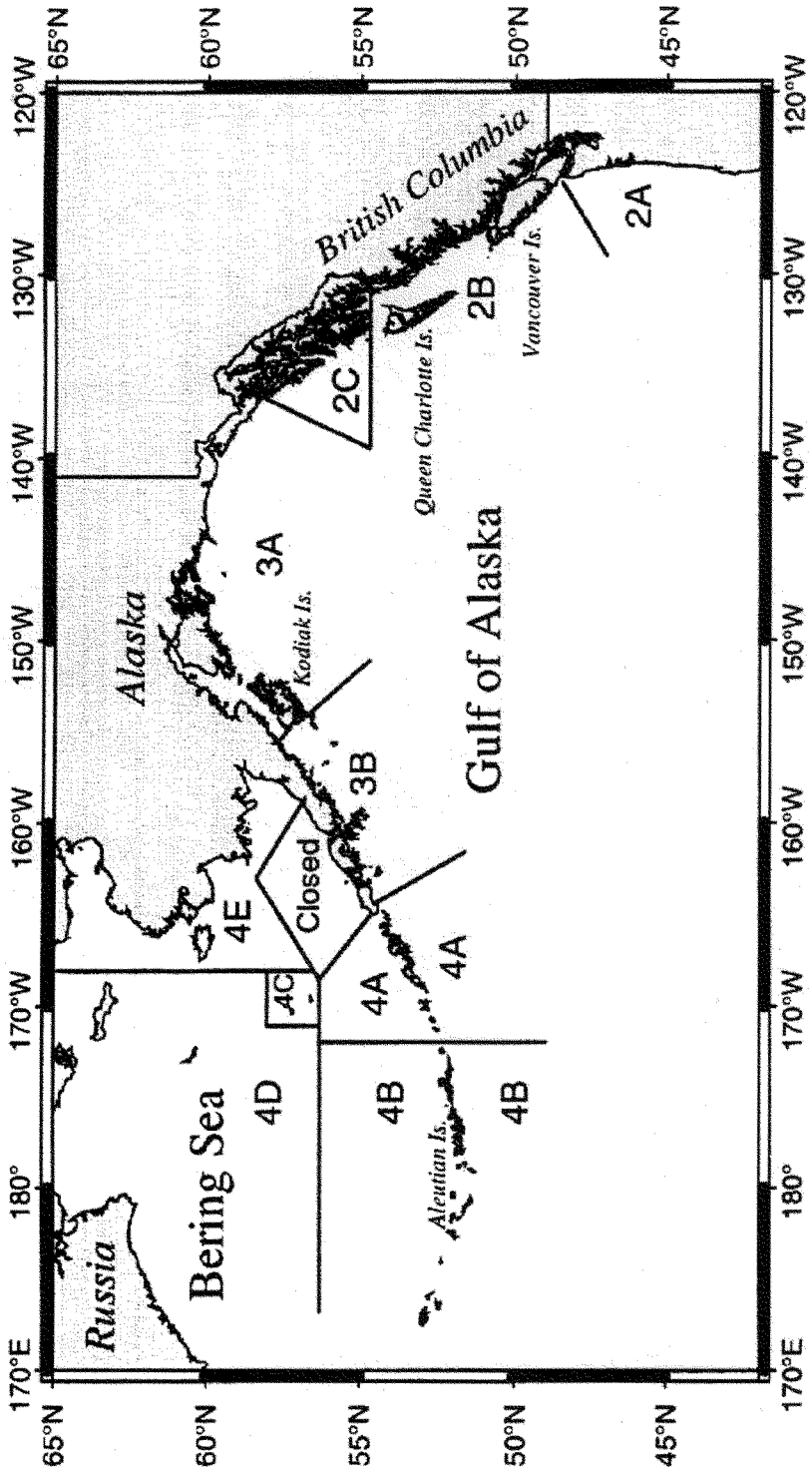

Figure 1. Regulatory areas for the Pacific halibut fishery.

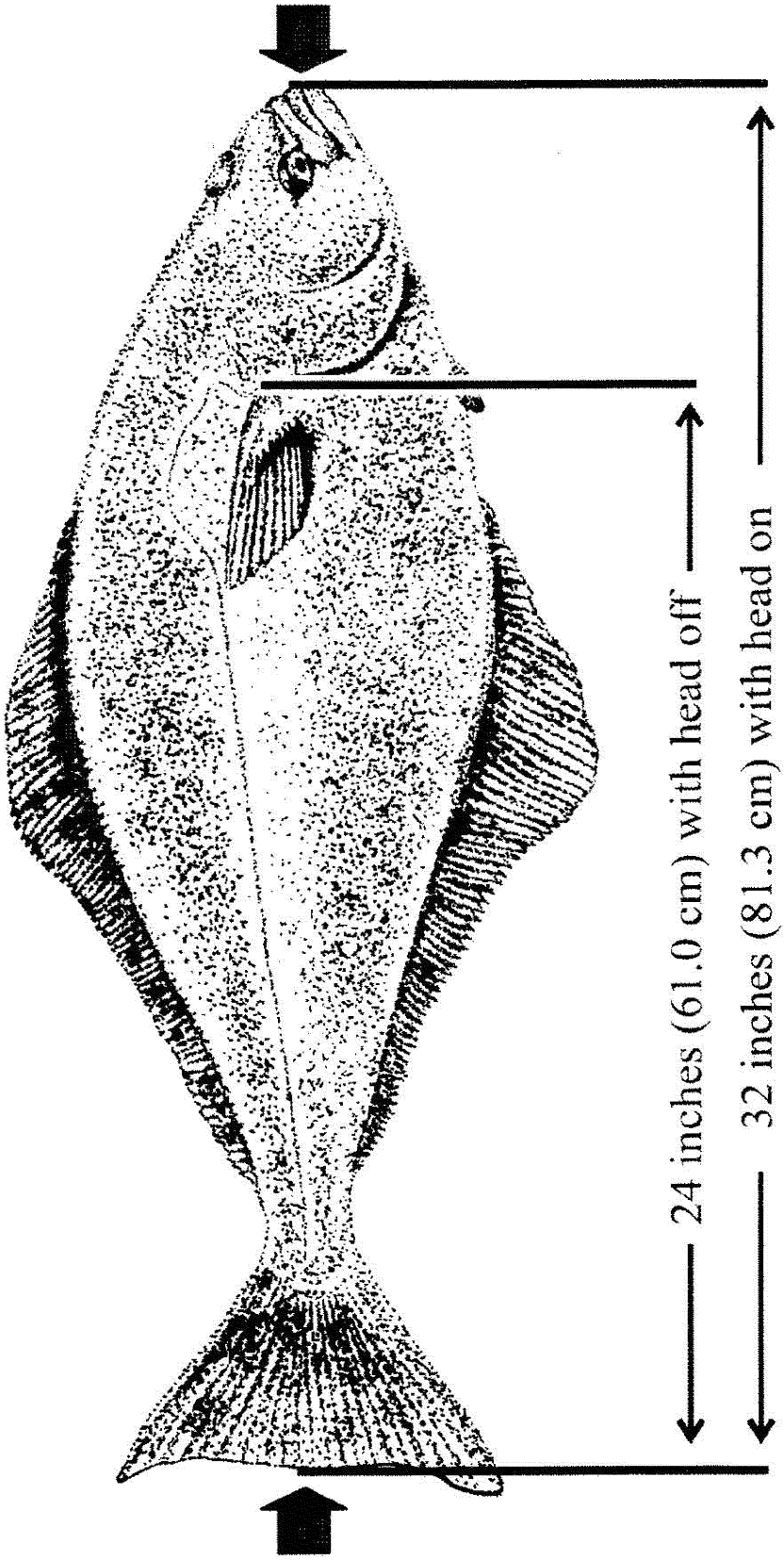

Figure 2. Minimum commercial size.

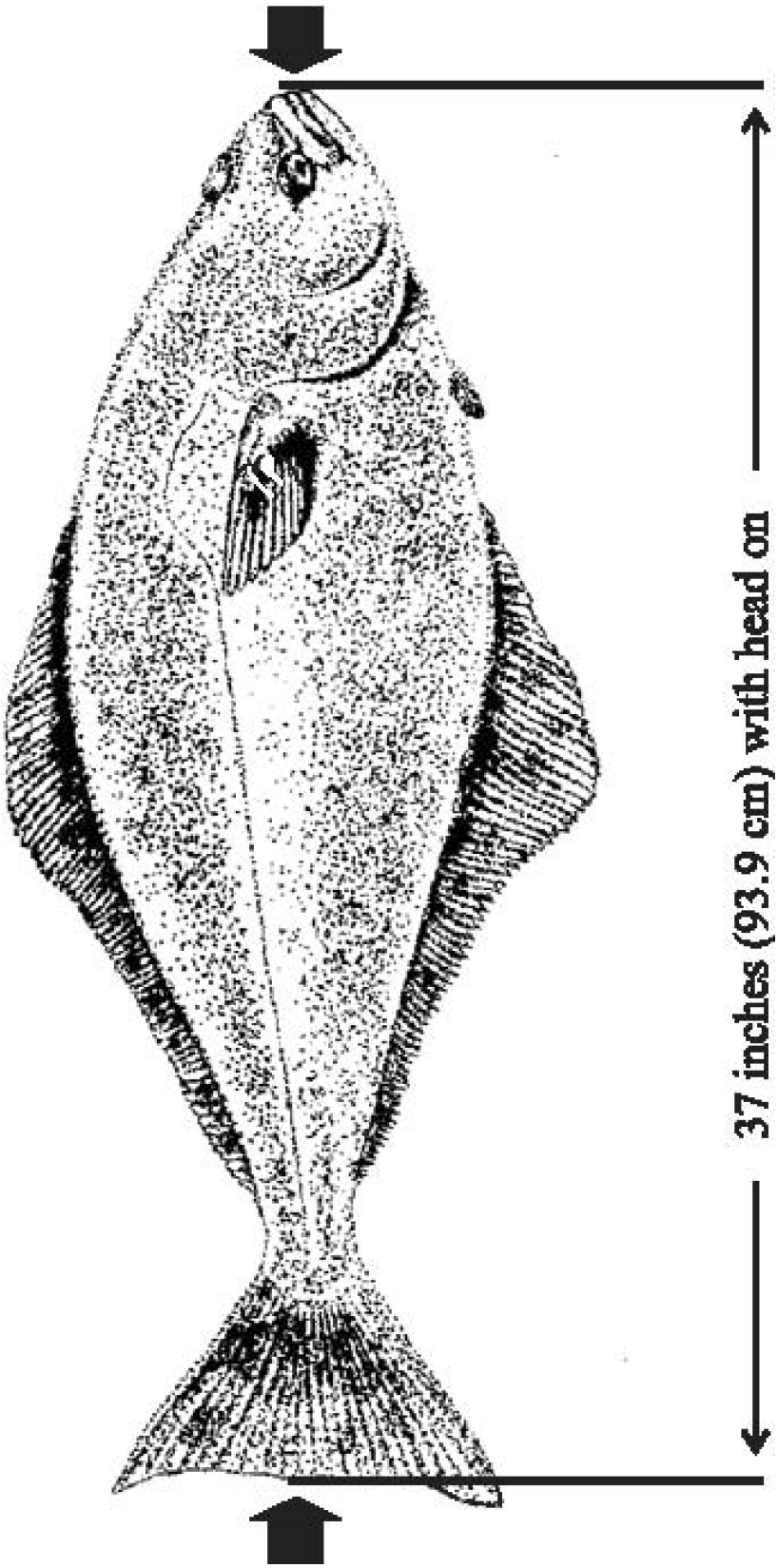

Figure 3. Maximum recreational size limit for halibut onboard a charter vessel referred to in 50 CFR 300.65 and fishing in Regulatory Area 2C (see Section 28 paragraph 2(a)).

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Classification

IPHC Regulations

These IPHC annual management measures are a product of an agreement between the United States and Canada and are published in the **Federal Register** to provide notice of their effectiveness and content. The notice-and-comment and delay-in-effectiveness date provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, are inapplicable to IPHC management measures because this regulation involves a foreign affairs function of the United States, 5 U.S.C. 553(a)(1). Furthermore, no other law requires prior notice and public comment for this rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this portion of the rule and none has been prepared.

2011 Area 2A Catch Sharing Plan, Annual Management Measures and Federal Regulations

As explained above in the preamble, the recreational management measures for Area 2A are promulgated through a different process than the process for the IPHC regulations themselves. NMFS proposed these management measures on January 18, 2011 (76 FR 2871).

Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Pacific Council's authority to allocate halibut catches among fishery participants in the waters in and off the U.S. West Coast.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) in association with the proposed rule for this action. A final regulatory flexibility analysis (FRFA) incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS responses to those comments, and a summary of the analyses completed to support the action. NMFS received no comments on the IRFA. A copy of the FRFA is available from the NMFS Northwest Region (*see* **ADDRESSES**) and a summary of the FRFA follows:

The main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational (sport), and Tribal fishery to target halibut in the manner that is appropriate to meet both the conservation requirements for species that co-occur with Pacific halibut and the needs of fishery participants in particular fisheries and fishing areas.

The proposed changes to the Catch Sharing Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, and the codified regulations would: (1) In the CSP, for the Oregon central coast, shift two percent of the subarea quota from the spring to the summer fishery, to provide as many fishing dates as possible during the summer fishery when participation is highest; (2) In the CSP specify that the definitions of closed areas set forth in the groundfish regulations will apply to the non-Indian directed halibut commercial fishery; (3) In codified regulations direct readers to the groundfish regulations for depth contour coordinates and update all references to groundfish regulations, for ease of compliance and to allow the public one location for closed area coordinates; (4) In codified regulations, add "receipt and possession" to the list of management measures that apply to treaty Indian fishers. These changes are necessary to make the codified regulations consistent with the IPHC regulations.

In determining the potential universe of entities subject to this rule, we must consider those entities to which this rule applies. Although many small and large nonprofit enterprises track fisheries management issues on the West Coast, the proposed changes to the Plan, codified regulations and annual management measures will not directly affect those enterprises. Similarly, although many fishing communities are small governmental jurisdictions, no direct regulations for those governmental jurisdictions will result from this rule. However, charterboat operations and participants in the non-treaty directed commercial fishery off the coast of Washington, Oregon, and California are small businesses that are directly regulated by this rule. Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery.

Because there is no new analysis or information available, the RIR/FRFA relies on the analysis in the 2009 RIR, which used information from the Pacific Fishery Management Council's DEIS on the 2009–2010 Groundfish Biennial Harvest Specifications and Management Measures to make income impact projections of the TAC on coastal communities. Using available analysis from the DEIS, the 2009 RIR estimated that the 2008 combined economic impact of commercial, recreational, and Tribal fisheries generated about $8.8 million in income impacts to the coastal Tribal and non-Tribal communities. Income impacts are the amount of employee salaries and benefits, business owner (proprietor) income and property-related income (rents, dividends, interest, royalties, *etc.* that result from commercial fishing and recreational expenditures). This 2008 estimate was based on a TAC of 1,220,000 lbs. For 2011, the TAC is 910,000 lbs or about 75 percent of the 2008 TAC. On a proportional basis, this decline would suggest that the income impacts for 2011 would be about $6.0 million. This projection assumes that prices are constant. However, this is not the case. According the Pacific States Marine Fisheries Commission Pacific Fishery Information Network (PacFIN) data reports (Report 307), the halibut prices have varied significantly by year: 2008—$3.57/lb, 2009—$2.72/lb, and through November 2010—$4.01 per lb. At $4.01 per lb, the projected ex-vessel value of the 2011 commercial Tribal (293,200 lbs) and non-Tribal (187,506 lbs) fishery is worth ex-vessel (payments to commercial fishermen) basis about $1.83 million. These ex-vessel price changes only affect the income estimates associated with commercial fishermen, and Tribal fishermen.

NOAA Fisheries cannot exempt small entities or change the reporting requirements for small entities. Thus, there are no other alternatives to the rule that minimize the impacts on small entities. The major economic effect on the fishery is from a change in the TAC which is set by international agreement. Given the TAC, the sport management measures implement the plan by managing the recreational fishery to

meet the differing fishery needs of the various areas along the coast according to the plan's objectives. The measures will be very similar to last year's management measures.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of halibut management in Area 2A, NMFS maintains a toll-free telephone hotline where members of the public may call in to receive current information on seasons and requirements to participate in the halibut fisheries in Area 2A. This hotline also serves as small entity compliance guide. Copies of this final rule are available from the NMFS Northwest Regional Office upon request (*See* **ADDRESSES**). To hear the small entity compliance guide associated with this final rule, call the NMFS hotline at 800–662–9825.

WDFW and ODFW held public meetings and crafted alternatives to adjust management of the sport halibut fisheries in their States. The States then narrowed the alternatives under consideration and brought the resulting subset of alternatives to the Council at the Council's September and November 2010 meetings. The Council and the States both considered a range of alternatives that could have similarly improved angler enjoyment of participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest. The range of alternatives that were considered, but ultimately rejected, includes alternate fishery structures, such as opening the sport fisheries on different days of the week than the final preferred alternative. Generally, by the time the alternatives reach the Council, because they have been through the State public review process, there is not a large number of alternatives. Rather, the range of alternatives has generally been reduced to the proposed action and the status quo. The status quo alternative was rejected because it would fail to: Provide adequate fishing opportunities during the summer; appropriately define specific closure areas; update all references to groundfish regulations; and correct the codified regulations consistent with the IPHC regulations.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian Tribes over shared Federal and Tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian Tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. government formally recognizes that 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the Tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty Tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, Tribal allocations and regulations, including the changes to the CSP, have been developed in consultation with the affected Tribe(s) and, insofar as possible, with Tribal consensus.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: March 11, 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 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

■ 2. In § 300.63, paragraphs (d)(1)(i), (d)(1)(ii), and (e), are revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(d) * * *

(1) * * *

(i) The sport fishery under section 26 of the annual domestic management measures and IPHC regulations;

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.231; or

* * * * *

(e) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* (1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N. lat. Between the U.S./Canada border and 46°16′ N. lat., the eastern boundary of the RCA, is the shoreline. Between 46°16′ N. lat. and 43°00′ N. lat., the RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between 43°00′ N. lat. and 42°00′ N. lat., the RCA is defined along an eastern boundary by a line approximating the 20-fm (37-m) depth contour. Coordinates for the 20-fm (37-m) boundary are listed at 50 CFR 660.71(b). Between 42°00′ N. lat. and 40°10′ N. lat., the RCA is defined along an eastern boundary by the 20-fm (37-m) depth contour. Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

(2) Non-treaty commercial vessels operating in the incidental catch fishery during the sablefish fishery north of Pt. Chehalis, Washington, in Area 2a are required to fish outside of a closed area. Under Pacific Coast groundfish regulations at 50 CFR 660.230, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA). It is unlawful to take and retain, possess, or land halibut taken with limited entry fixed gear within the North Coast Commercial YRCA. The North Coast Commercial YRCA is an area off the northern Washington coast, overlapping the northern part of the North Coast Recreational YRCA, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70(b).

(3) Non-treaty commercial vessels operating in the incidental catch fishery during the salmon troll fishery in Area 2A are required to fish outside of a closed area. Under the Pacific Coast

groundfish regulations at 50 CFR 660.330(10), fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess or land fish within the Salmon Troll YRCA. The Salmon Troll YRCA is an area off the northern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.70(c), and in salmon regulations at 50 CFR 660.405.

■ 4. In § 300.64, paragraph (d) is revised to read as follows:

§ 300.64 Fishing by U.S. treaty Indian Tribes.

* * * * *

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission's management measures governing size limits, careful release of halibut, logs, receipt and possession, and fishing gear (published pursuant to § 300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

* * * * *

[FR Doc. 2011–6133 Filed 3–11–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA294

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2011 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2011, through 1200 hrs, A.l.t., May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA is 2,139 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,089 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 10, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 11, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–6135 Filed 3–11–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 51

Wednesday, March 16, 2011

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0024]

RIN 0579–AD38

Importation of Figs and Pomegranates From Chile Under a Systems Approach

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation into the continental United States of figs and pomegranates from Chile, subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This proposed rule would allow for the safe importation of fresh figs and pomegranates from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: We will consider all comments that we receive on or before May 16, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0024* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0024.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Currently, the importation into the United States of fresh figs (*Ficus carica*) from Chile is not allowed. Importation of pomegranates (*Punica granatum*) from Chile is allowed if the fruit is fumigated with methyl bromide. The Animal and Plant Health Inspection Service (APHIS) also received a request from the national plant protection organization (NPPO) of Chile to allow fresh figs and pomegranates from Chile to be imported into the continental United States (the lower 48 States, the District of Columbia, and Alaska) without methyl bromide fumigation, but subject instead to a systems approach. As part of our evaluation of Chile's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled "Pest Risk Assessment for Fresh Fruits of Pomegranate (*Punica granatum*) and Fig (*Ficus carica*) from Chile Imported into the Continental United States" (August 2009), evaluates the risks associated with the importation of figs and pomegranates into the continental United States from Chile. The risk management document lists the phytosanitary measures necessary to ensure the safe importation into the United States of figs and pomegranates from Chile.

The PRA identifies one quarantine pest that could be introduced into the United States in consignments of fresh figs and pomegranates from Chile: *Brevipalpus chilensis* (false red mite).[1] A quarantine pest is defined in § 319.56–2 as "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." In the PRA, the likelihood and consequences of introducing this pest to the United States are considered, and *B. chilensis* is rated as having a high pest risk potential. Pests receiving a rating within the high range generally necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the United States.

Based on the findings of our PRA and risk management document, we are proposing to allow the importation of fresh figs and pomegranates from Chile into the continental United States, subject to a systems approach. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries

[1] The PRA also identified Mediterranean fruit fly (Medfly) as a pest that could be introduced into the United States, but Chile has recently been recognized as free of Medfly.

that are not free of certain plant pests. The systems approach for fresh figs and pomegranates from Chile would require the fruit to be grown in a place of production that is registered with the NPPO of Chile and its identity maintained for traceback to the production site. The fruit would have to undergo pre-harvest sampling at the registered production site under the direction of the NPPO of Chile. The NPPO of Chile would present a list of production sites certified as having a low prevalence of *B. chilensis* to APHIS. Following post-harvest processing, the fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile. Each consignment of the fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *B. chilensis* based on field and packinghouse inspections.

The mitigation measures in the proposed systems approach are discussed in greater detail below, as well as in the risk management document.

Production Site Registration

The production site where the fruit is grown would have to be registered with the NPPO of Chile. Harvested figs and pomegranates would have to be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration would have to be renewed annually.

Registration of production sites with the NPPO of Chile and marking of field cartons or containers with the registration numbers would allow traceback to the production site if pest problems were found on fruit shipped to the United States. Problem production sites could then be removed from the program until further mitigation measures were taken to reduce pest populations.

Low-Prevalence Production Site Certification

Between 1 and 30 days prior to harvest, random samples of fruit would have to be collected from each registered production site under the direction of the NPPO of Chile. These samples would have to undergo a pest detection and evaluation method as follows: The fruit would have to be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process would then be repeated. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite were found, the production site would not qualify for certification as a low-prevalence production site. Each production site would have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would be required to present a list of certified production sites to APHIS.

Production site low-prevalence certification would identify problem production sites and prevent the shipment of fruit with *B. chilensis* mites from such sites. This mite sampling method has been tested in Chile and found to be successful in identifying grape and citrus production areas with high and low populations of mites.

Post-Harvest Processing

After harvest, all damaged or diseased fruits would have to be culled at the packinghouse and the remaining fruit would have to be packed into new, clean boxes, crates, or other APHIS-approved packing container. Each container in which the fruit is packed would have to have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

Post-harvest processing procedures, such as culling damaged fruit and sampling for mites, would remove fruit that could contain pests from consignments being shipped to the United States. Culling is a standard procedure to produce quality fruit without pests.

Phytosanitary Inspection

The fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample would have to be drawn from each consignment. In order to be eligible for shipment to the continental United States, the fruit in the consignment would have to pass inspection by meeting the following requirements:

- Fruit presented for inspection would have to be identified in the shipping documents accompanying each lot of fruit to specify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identification would have to be maintained until the fruit is released for entry into the United States.
- The biometric sample, referred to above, of the boxes, crates, or other APHIS-approved packing containers from each consignment would be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers would be visually inspected for quarantine pests. A portion of the fruit would have to be washed with soapy water and the collected filtrate microscopically examined for *B. chilensis.* If a single live *B. chilensis* mite were found during the inspection process, the certified low-prevalence production site where the fruit was grown would lose its certification.

The proposed requirements for the identification of the figs and pomegranates to their production sites and packing sheds would aid in traceback if pests were found. The proposed requirements for visual inspection and biometric sampling of the fruit would provide additional layers of protection against the possibility of figs and pomegranates infested with quarantine pests being shipped from Chile to the United States. These methods have proved effective when employed to inspect consignments of citrus from Chile.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *B. chilensis* based on field and packinghouse inspections.

Requiring a phytosanitary certificate would ensure that the NPPO of Chile has inspected the fruit and certified that the fruit meets the conditions for export to the United States.

Executive Order 12866 and Regulatory Flexibility Act

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

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

This proposed rule would allow the importation of fresh fig and pomegranate fruit from Chile under a systems approach. Entities potentially affected by the proposed rule are fig and pomegranate fruit growers. They are classified within the industry, Other Non-citrus Fruit Farming, for which the Small Business Administration small-entity standard is annual sales of not more than $750,000. Annual receipts for this industry averaged about $112,000 in 2007, well below the small-entity standard.

While most U.S. fig and pomegranate operations are small, they are not expected to be significantly affected by the proposed rule. For both fruits, relatively small quantities are expected to be imported from Chile during the U.S. off-season: Less than 1 percent and less than 4 percent of U.S. consumption of figs and pomegranates in recent years, respectively. The counter-seasonality of the imports from Chile will preclude negative price impacts for U.S. producers and may help accelerate the general demand for these fruits as consumers further develop the taste for these fruits, thereby benefiting domestic producers also over time.

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

Executive Order 12988

This proposed rule would allow fresh figs and pomegranates to be imported into the continental United States from Chile. If this proposed rule is adopted, State and local laws and regulations regarding fresh figs and pomegranates imported under this rule would be preempted while the fruit is in foreign commerce. Fresh figs and pomegranates are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2010–0024. Please send a copy of your comments to: (1) Docket No. APHIS–2010–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under the Plant Protection Act (7 U.S.C.7701 *et seq.*) the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United Sates.

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319–56.50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation into the continental United Sates of figs and pomegranates from Chile, subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling sampling at the registered production site. Following the post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This proposed rule would allow for the safe importation of fresh figs and pomegranates from Chile using mitigation measures other than fumigation with methyl bromide.

Implementation of this rule will require respondents to complete documents such as a phytosanitary certificate, marking of cartons, production site registration, and to provide a list of certified production sites.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency s functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5468 hours per response.

Respondents: Importers of figs and pomegranates; NPPO of Chile.

Estimated annual number of respondents: 31.

Estimated annual number of responses per respondent: 50.6774.

Estimated annual number of responses: 1,571.

Estimated total annual burden on respondents: 859 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. A new § 319.56–51 is added to read as follows:

§ 319.56–51 Fresh figs and pomegranates from Chile.

Fresh figs (*Ficus carica*) and fresh pomegranates (*Punica granatum*) may be imported into the continental United States from Chile under the following conditions:

(a) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. Harvested figs and pomegranates must be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration must be renewed annually.

(b) *Low-prevalence production site certification.* The fruit must originate from a low-prevalence production site to be imported under the conditions in this section. Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of the NPPO of Chile. These samples must undergo a pest detection and evaluation method as follows: The fruit must be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the 200-mesh sieve must then be placed on a petri dish and analyzed for the presence of live *Brevipalpus chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low-prevalence production site. Each production site may have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(c) *Post-harvest processing.* After harvest, all damaged or diseased fruits must be culled at the packinghouse and must be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container in which the fruit is packed must have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

(d) *Phytosanitary inspection.* Fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample must be drawn and examined from each consignment. Figs and pomegranates in any consignment may be shipped to the continental United States under the conditions of this section only if the consignment passes inspection as follows:

(1) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit to specify the production site or sites in which the fruit was produced and the packing shed or sheds in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(2) A biometric sample of the boxes, crates, or other APHIS-approved packing containers from each consignment will be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests. A portion of the fruit must be washed with soapy water and the collected filtrate must be microscopically examined for *B. chilensis.* If a single live *B. chilensis* mite is found during the inspection process, the certified low-prevalence production site where the fruit was grown will lose its certification.

(e) *Phytosanitary certificate.* Each consignment of fresh figs or pomegranates must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis* based on field and packinghouse inspections.

Done in Washington, DC this 9th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–6040 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG07

Small Business Size Standards: Professional, Scientific and Technical Services

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated 45 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by an NAICS Sector. SBA has issued a White Paper entitled "Size Standards Methodology" and published in the October 21, 2009 issue of the **Federal Register** a notice that "Size Standards Methodology" is available on its Web site at *http://www.sba.gov/size* for public review and comments. The "Size Standards Methodology" White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before May 16, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AG07 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments; or
- *Mail/Hand Delivery/Courier:* Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all 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 by mail to U.S. Small Business Administration, Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or by e-mail to *sizestandards@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, PhD, Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal government small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for most private sector industries in the U.S. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA's size standards consist of 42 different levels, covering 1,141 NAICS industries and 18 sub-industry activities. Thirty-one of these size levels are based on average annual receipts, eight are based on number of employees and three are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect the changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary.

In addition, on September 27, 2010 the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach to reviewing a group of related industries within an NAICS Sector. Except for manufacturing, an NAICS Sector generally consists of 25 to 75 industries. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise the size standards for industries whose data support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that was applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule and the impact of the proposed revisions to size standards on Federal small business assistance.

Size Standards Methodology

SBA has recently developed a "Size Standards Methodology" that it uses for developing, reviewing and modifying size standards when necessary. SBA has published the document on its Web site at *http://www.sba.gov/size.* SBA does not apply all features of its "Size Standards Methodology" to all industries because not all are appropriate. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 54, the methodology described here mostly applies to establishing receipts based standards. However, SBA makes the methodology available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues regarding its "Size Standards Methodology," such as suggestions on alternative approaches to establishing, reviewing and modifying size standards; whether there are alternative or additional factors or data sources that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's using anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology. Comments on the "Size Standards Methodology" should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov*; the docket number is SBA–2009–0008. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. As with comments received to this proposed rule, SBA will post all comments on "Size Standards Methodology" on *http://www.regulations.gov*. As of March 16, 2011, SBA has received two comments on "Size Standards Methodology." The comments have been published and are available to the public at *http://www.regulations.gov*. SBA continues to welcome comments on its methodology from interested parties.

Congress has authorized SBA's Administrator to establish small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) states that "* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator." Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure, SBA considers

current economic conditions, together with its own mission, program objectives, the Administration's current policies, suggestions from industry groups and Federal Agencies, and public comments on the proposed rule when it establishes small business size standards. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry. Below is a discussion on SBA's analysis of the economic characteristics of each industry reviewed in this proposed rule, the impact of proposed size standards revisions on SBA programs and on Federal procurement programs and whether a revised size standard excludes dominant firms in the industry from being considered small. This proposed rule affords the public an opportunity to review and comment on the data and methodology SBA uses to evaluate and revise a size standard.

Industry Analysis

For the ongoing comprehensive size standards review, SBA has established three "base" or "anchor" size standards that apply to most industries—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade) and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for the manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for the nonmanufacturing industries. The receipts based anchor size standard has been adjusted periodically for inflation. Over the years, SBA has increased the anchor for inflation, which stands at $7.0 million today. Since 1986, all industries in the Wholesale Trade Sector have had the 100 employee size standard for non-procurement SBA programs. For Federal procurement purposes, the size standard for all industries in both the Wholesale Trade (NAICS Sector 42) and the Retail Trade (NAICS Sector 44–45) is 500 employees under the SBA's nonmanufacturer rule. 13 CFR 121.406(b).

These long standing anchor size standards have gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish a unique small business size standard for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries at the 6-digit NAICS level (1,141) for which SBA establishes size standards. The data SBA analyzes are generally static, but the U.S. economy is not. Hence, absolute precision is impossible. Based on historical but static data, therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from those of others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as "anchor comparison group"). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. For industries with receipts based size standards, including those in NAICS Sector 54 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average receipts, with the weighted average size standard for the group being $29 million. SBA refers to this comparison group as the "higher level receipts based size standard group."

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition and distribution of firms by size. 13 CFR 121.102(a) and (b). As an additional factor, SBA evaluates the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These five factors are generally the most important ones for establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, industry growth trends, SBA financial assistance and other program objectives, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions and the Administration's policies. Public comments on a proposed size standard rule also provide important additional information. SBA thoroughly reviews all public comments on proposed rules and makes adjustments to proposed size standards if necessary before making a final decision on a revised size standard. Below is a brief description of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 54 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the "SBA Size Standard Methodology" White Paper, available on its Web site at *http://www.sba.gov/size*.

1. *Average firm size.* SBA computes two measures of average firm size: Simple average firm size and weighted average firm size. For industries with receipts based size standards the simple average firm size is the total receipts of an industry divided by the total number of firms in that industry. The weighted average firm size is the sum of weighted simple average firm sizes in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average firm size weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weights to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries

in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this is a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets size as a proxy measure to assess the levels of capital requirements for new entrants to an industry.

SBA begins with the sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009. SBA then applies these ratios to the average receipts size of firms in that industry. An industry with a significantly higher level of average assets than that of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, if the industry has a significantly smaller average assets size compared to the anchor comparison group, the anchor size standard, or in rare cases one lower than the anchor, may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts obtained by firms that are among the largest in an industry. In this proposed rule, SBA evaluates the share of industry receipts generated by the four largest firms in the industry. This is referred to as the "four-firm concentration ratio." SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large firms, SBA will establish a size standard relatively higher than the anchor size standard. The four-firm concentration ratio is not an important factor if its value for an industry under review is less than 40 percent. For industries in which the four largest firms account for 40 percent or more of an industry's total receipts, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry receipts accounted for by firms of different receipts and employment size classes in the industry. SBA evaluates this factor in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this indicates that small businesses are competitive in that industry. This supports adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This supports adopting a size standard above the anchor.

Concentration among firms is a measure of inequality of distribution. To evaluate the degree of inequality of distribution within an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) in the horizontal axis and cumulative percentages of receipts (or other measures of size) in the vertical axis. (For further detail, please refer to SBA's "Size Standards Methodology" White Paper on the SBA Web site at *http://www.sba.gov/size*.) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the degree of inequality of distribution for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher degree of inequality of distribution (*i.e.,* higher Gini coefficient) compared to industries in the anchor comparison industry group this will, all else being equal, warrant a higher size standard than the anchor. Conversely, for industries with similar or more equal distribution (*i.e.,* similar or lower Gini coefficient values) than the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on the level of Federal small business assistance. This assessment primarily focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the share of Federal contracting dollars awarded to small businesses in an industry that receives a significant amount of Federal contracting dollars is significantly less than the small business share of the industry's total receipts, this will be justification to consider a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide share may have a variety of causes, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required on Federal contracts as compared to typical commercial contracting work and the size of contracting requirements of Federal customers. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts and, hence, the firms receiving such contracts are expected to possess different characteristics than the average characteristics for all firms in that industry. To compare the small business Federal contracting share with the industry-wide small business share, SBA analyzes the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal procurement trends in its size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts and (2) the amount of total Federal contracting averages $100 million or more during fiscal years 2007–2009 (the latest years for which complete Federal procurement data are available). SBA selected these thresholds because they reflect a significant level of contracting in which a revision to a size standard may have an impact on expanding small business opportunities.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a size standard revision on SBA's loan programs. For this SBA examines the volume of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards reduce financial assistance to small businesses, a higher size standard would be supportable. However, if small businesses have already been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size

standard, consideration of this factor for determining the size standard may not be necessary.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 County Business Patterns (*see http://www.census.gov/econ/cbp/)* and data from 2007 Economic Census (*see http://www.census.gov/econ/census07/)* prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The Census tabulation provided SBA with industry-specific data on the number of firms, number of establishments and number of employees for companies by the size of firm based on the 2007 County Business Patterns and estimated annual payroll and estimated annual receipts of companies by the size of firm based on the 2007 Census. That is, the data are by the size class of the total company; however, the data itself, within a particular size class, represents the company's total data for a specific industry only. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio and distribution of firms by receipts and employment size.

In some cases, where industry data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible.

The data from the Census Bureau's tabulation are limited down only to the 6-digit NAICS industry level and hence do not provide economic characteristics at the sub-industry level. Thus, when establishing, reviewing, or modifying size standards at the sub-industry level (that is, one of the "exceptions" in SBA's table of size standards), SBA evaluates the data from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG) and Central Contractor Registration (CCR) following a two-step procedure. First, using FPDS–NG SBA identifies product service codes (PSCs) that correspond to specific sub-industry activities or "exceptions" and then identifies firms that are active in Federal contracting involving those PSCs. Then, SBA obtains those firms' revenue and employment data from the CCR database. SBA uses that data to evaluate the actual size of businesses that FPDS–NG identifies for those procurements. In this proposed rule, SBA applied this approach to determine industry and Federal contracting factors for "exceptions" under NAICS 541330, Engineering Services.

To calculate average assets size, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009.

To evaluate Federal contracting trends, SBA examined Federal contract award data for fiscal years 2007–2009 from FPDS–NG.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the "SBA Size Standards Methodology" White Paper, which is available on its Web site at *http://www.sba.gov/size.*

To assess the impact on financial assistance to small businesses SBA examined data on its own guaranteed loan programs for fiscal years 2007–2009.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm would or could exercise a major controlling influence at the national level in an industry that includes a significant number of business concerns. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from the definition of small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive size standards review of receipts based size standards, SBA proposes to select size standards for industries from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). Currently, there are 31 different levels of receipts based size standards. They range from $0.75 million to $35.5 million and many of them apply to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. There will also be greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 54 that has a receipts based standard. In this proposed rule, SBA has not reviewed the six employee based size standards in NAICS Sector 54. Those employee based size standards will remain on effect until SBA reviews industries that have employee based size standards. The eight "fixed" receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30.0 million and $35.5 million. To establish these eight receipts based size standard levels SBA considered the current minimum, the current maximum and most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following—$2.5 million to $4.5 million, $7 million, $9.0 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because this is an anchor standard for receipts based standards. The lowest or minimum receipts based size level that SBA is proposing will be $5 million. Other than the size standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million will include those industries with the currently lowest receipts based standards, which range from $2.0 million to $4.5 million. Among the higher levels size clusters, SBA has selected $10 million, $14 million, $25.5 million, and $35.5 million as the other four levels of fixed size standards. Because of a large gap between two of the size standard intervals, SBA established intermediate levels of $19 million between $14 million and $25.5 million and $30 million between $25.5 million and $35.5 million. These two intermediate size levels reflect roughly

similar proportional differences between the two successive size standard levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a specific size standard level for each industry, SBA believes that establishing different size standards for closely related industries may not be appropriate. For example, in cases where many of the same businesses operate in the multiple industries, establishing a common size standard might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than establishing separate size standards for each of those industries. This led SBA to establish a common size standard for the Computer Systems Design and Related Services industries (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 and NAICS 811212), even though the industry data might have supported a distinct size standard for each industry. 57 FR 27906 (June 23, 1992). Businesses engaged in computer related services typically perform activities in two or more other related industries. SBA has also established a common size standard for certain architectural and engineering (A&E) services industries (NAICS 541310, NAICS 541330 (excluding the "exceptions"), NAICS 541360, NAICS 541370 and Map Drafting which is an "exception" under NAICS 541340). As described below in this proposed rule SBA has considered additional common size standards for several related industries within NAICS Sector 54, as alternatives to industry specific separate size standards. Whenever SBA proposes a common size standard for closely related industries it will provide its justification in the proposed rule.

Evaluation of Industry Structure

SBA has evaluated the structure of 45 industries and three sub-industries in NAICS Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services, to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry or sub-industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the "receipts based anchor comparison group." Because the goal of SBA's size review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from the others in the anchor group, a size standard lower or higher than the anchor size standard might be selected. The level of the new size standard is determined based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for the group is $29 million. SBA refers to this group of industries as the "higher level receipts based size standard comparison group." Differences in industry structure between an industry under review and the industries in the two comparison groups are determined by comparing data on each of the industry factors, including average firm size, average assets size, four-firm concentration ratio and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. firm size ($ million)		Avg. assets size ($ million)	Avg. four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) [a]	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.55	28.91	0.94	18.4	249.3	0.740
Higher Level	6.22	97.10	2.85	27.0	1,773.5	0.826

[a] To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each of the industry factors in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7.0 million anchor size standard appropriate for that factor.

An industry factor with a value significantly above or below the anchor comparison group will generally warrant a size standard above or below the $7.0 million anchor. The level of the new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts is $4.0 million, that would support a $19 million size standard. The $4.0 million level is 52.5 percent between the average firm size of $1.55 million for the anchor comparison group and $6.22 million for the higher level comparison group (($4.00 million − $1.55 million) ÷ ($6.22 million − $1.55 million) = 0.525 or 52.5%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.54 million ([{$29.0 million − $7.0 million} * 0.525] + $7.0 million = $18.54 million). The final step is to round the estimated $18.54 million size standard to the nearest fixed size standard level, in this example to $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in "SBA Size Standards Methodology" which is available on its Web site at *http://*

www.sba.gov/size. (However, it should be noted that figures in the "Size Standards Methodology" White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule). Table 2 shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* gini coefficient	Then size standard is ($ million)
<1.34	<25.81	<0.85	<180.0	<0.736	5.0
1.34 to 1.87	25.81 to 33.56	0.85 to 1.07	180.0 to 353.2	0.736 to 0.746	7.0
1.88 to 2.61	33.57 to 44.41	1.08 to 1.37	353.3 to 595.7	0.747 to 0.759	10.0
2.62 to 3.57	44.42 to 58.35	1.38 to 1.76	595.8 to 907.5	0.760 to 0.777	14.0
3.58 to 4.79	58.36 to 76.18	1.77 to 2.26	907.6 to 1,305.8	0.778 to 0.799	19.0
4.80 to 5.96	76.19 to 93.22	2.27 to 2.74	1,305.9 to 1,686.9	0.800 to 0.821	25.5
5.97 to 7.02	93.23 to 108.72	2.75 to 3.17	1,687.0 to 2,033.2	0.822 to 0.840	30.0
>7.02	>108.72	>3.17	>2,033.2	>0.840	35.5

Derivation of Size Standards Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the extent to which small businesses are successful in getting Federal contracts under the existing size standards. However, the available data on Federal contracting are limited to identifying businesses as small or other than small, with no information on exact size of businesses receiving Federal contracts in order to conduct a more precise analysis.

Given the above limitation of Federal contracting data, for the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than their current size standard for industries where the small business share of total Federal contracting dollars is between 10 and 30 percentage points lower than their shares in total industry receipts and at two levels higher than the current size standard if the difference is more than 30 percentage points.

SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. The FPDS–NG data have a number of limitations and there are also complex relationships among a number of variables affecting small business participation in the Federal marketplace. SBA believes, therefore, that a larger adjustment to size standards based on Federal contracting activity requires a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience to support a different size standard than indicated by this general rule. That would involve SBA's taking into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comment on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 46 industries reviewed in this proposed rule (including 45 industries in NAICS Sector 54 and one industry in NAICS Sector 81), 26 industries received an average of $100 million or more annually in Federal contracting dollars during fiscal years 2007–2009. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) and a separate size standard was derived for that factor in 15 of those 26 industries.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each of the industries covered by this proposed rule. Each NAICS Industry in columns 2, 3, 4, 6, 7 and 8 shows two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column; the lower number is the size standard supported by that factor. For the four-firm concentration ratio, a size standard is estimated based on the average receipts of the top four firms if its value is 40 percent or more. If the four-firm concentration ratio for an industry (column 5) is less than 40 percent, no size standard is estimated for that factor. Column 9 shows the new size standard for each industry, calculated as the average of size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA "Size Standard Methodology" White Paper which is available on its Web site at *http://www.sba.gov/size.* For comparison, the current size standards are also shown in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current size standard
541110	$1.4	$105.8	$0.3	2.5	$1,423.1	0.758		$10.0	$7.0
Offices of Lawyers	7.0	30.0	5.0			$10.0			
541191	1.0	24.2	0.4			0.700		5.0	7.0
Title Abstract and Settlement Offices.	5.0	5.0	5.0			$5.0			
541199	0.9	18.3		29.0	176.3	0.730	−21.5	7.0	7.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued

[millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current size standard
All Other Legal Services ..	5.0	5.0	.....	.....	.....	$5.0	$10.0		
541211	1.2	116.1	0.4	32.8	5,227.3	0.747	−11.7	14.0	8.5
Offices of Certified Public Accountants.	5.0	35.5	5.0	.....	.....	$10.0	$14.0		
541213	0.5	131.5	.....	.....	.....	0.681	.....	14.0	7.0
Tax Preparation Services	5.0	35.5	.....	.....	.....	$5.0			
541214	7.7	113.9	6.6	.....	.....	0.886	.....	35.5	8.5
Payroll Services	35.5	35.5	35.5	.....	.....	$35.5			
541219	0.5	6.1	0.2	.....	.....	0.618	−22.4	7.0	8.5
Other Accounting Services	5.0	5.0	5.0	.....	.....	$5.0	$14.0		
541310	1.6	25.1	0.6	5.2	489.3	0.727	−13.3	7.0	4.5
Architectural Services	7.0	5.0	5.0	.....	.....	$5.0	$7.0		
541320	0.8	6.3	0.3	6.1	80.6	0.586	.....	5.0	7.0
Landscape Architectural Services.	5.0	5.0	5.0	.....	.....	$5.0			
541330	4.0	112.0	1.5	.....	.....	0.868	−0.1	25.5	4.5
Engineering Services	19.0	35.5	14.0	.....	.....	$35.5			
Except Military and Aerospace Equipment and Military Weapons.	3,086.3 35.5	9,073.4 35.5	1,187.1 35.5	36.0	149,375.0	0.660 $5.0	.....	25.5	27.0
Except Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	27.0
Except Marine Engineering and Naval Architecture.	4,088.8 35.5	12,295.3 35.5	1,572.6 35.5	38.5	64,100.0	0.668 $25.0	.....	25.5	18.5
541340	0.8	68.0	.....	.....	.....	0.752	.....	14.0	7.0
Drafting Services	5.0	19.0	.....	.....	.....	$10.0			
Except Map Drafting	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	4.5
541350	0.4	6.4	.....	13.7	72.8	0.569	−31.1	7.0	7.0
Building Inspection Services.	5.0	5.0	.....	.....	.....	$5.0	$14.0		
541360	2.7	60.4	.....	37.4	256.1	0.853	.....	25.5	4.5
Geophysical Surveying and Mapping Services.	14.0	19.0	.....	.....	.....	$35.5			
541370	0.7	6.5	0.3	7.6	120.9	0.554	−25.4	5.0	4.5
Surveying and Mapping (except Geophysical) Services.	5.0	5.0	5.0	.....	.....	$5.0	$7.0		
541380	2.6	19.2	1.2	.....	.....	0.759	1.0	10.0	12.0
Testing Laboratories	10.0	5.0	$10.0	.....	.....	$10.0			
541410	0.8	5.1	0.2	.....	.....	0.557	.....	5.0	7.0
Interior Design Services ...	5.0	5.0	5.0	.....	.....	$5.0			
541420	1.3	9.5	.....	.....	.....	0.714	.....	5.0	7.0
Industrial Design Services	5.0	5.0	.....	.....	.....	$5.0			
541430	0.6	4.1	0.2	3.3	79.7	0.560	.....	5.0	7.0
Graphic Design Services ..	5.0	5.0	5.0	.....	.....	$5.0			
541490	0.8	6.0	.....	11.1	45.7	0.623	.....	5.0	7.0
Other Specialized Design Services.	5.0	5.0	.....	.....	.....	$5.0			
541511	2.0	51.0	0.7	7.4	1,862.3	0.839	−5.2	14.0	25.0
Custom Computer Programming Services.	10.0	14.0	5.0	.....	.....	$30.0			
541512	2.9	145.9	1.0	20.0	6,243.2	0.885	−7.3	25.5	25.0
Computer Systems Design Services.	14.0	35.5	7.0	.....	.....	$35.5			
541513	7.2	150.6	.....	.....	.....	0.918	23.0	35.5	25.0
Computer Facilities Management Services.	35.5	35.5	.....	.....	.....	$35.5			
541519	2.6	100.0	0.9	28.6	1,912.1	0.893	15.2	19.0	25.0
Other Computer Related Services.	14.0	30.0	7.0	.....	.....	$35.5			
Except Information Technology Value Added Resellers.	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	150 employees
541611	1.4	59.9	0.5	17.2	3,482.1	0.817	−12.8	14.0	7.0
Administrative Management and General Management Consulting Services.	7.0	19.0	5.0	.....	.....	$25.5	$10.0		
541612	1.7	56.3	0.4	23.6	1,365.4	0.803	−5.3	14.0	7.0
Human Resources Consulting Services.	7.0	14.0	5.0	.....	.....	$25.5			

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued
[millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Current size standard
541613	1.1	20.6	0.4	7.3	489.1	0.753	−26.1	7.0	7.0
Marketing Consulting Services.	5.0	5.0	5.0	.....	.....	$10.0	$10.0		
541614	3.4	86.6	0.9	.....	.....	0.886	−0.5	19.0	7.0
Process, Physical Distribution and Logistics Consulting Services.	14.0	25.5	7.0	.....	.....	$35.5			
541618	0.8	19.5	0.3	17.5	226.2	0.698	−39.3	7.0	7.0
Other Management Consulting Services.	5.0	5.0	5.0	.....	.....	$5.0	$14.0		
541620	1.3	16.5	0.5	6.1	160.6	0.727	−8.9	5.0	7.0
Environmental Consulting Services.	5.0	5.0	5.0	.....	.....	$5.0			
541690	1.1	54.3	0.4	.....	.....	0.775	−13.6	10.0	7.0
Other Scientific and Technical Consulting Services.	5.0	14.0	5.0	.....	.....	$14.0	$10.0		
541720	2.9	24.5	1.8	26.6	451.3	0.811	1.5	19.0	7.0
Research and Development in the Social Sciences and Humanities.	14.0	5.0	14.0	.....	.....	$25.5			
541810	2.5	53.0	0.7	26.5	2,156.7	0.812	−13.4	14.0	7.0
Advertising Agencies	10.0	14.0	5.0	.....	.....	$25.5	$10.0		
541820	1.2	13.7	0.4	19.3	403.7	0.698	−21.6	7.0	7.0
Public Relations Agencies	5.0	5.0	5.0	.....	.....	$5.0	$10.0		
541830	4.3	65.3	.....	36.0	320.1	0.834	.....	25.5	7.0
Media Buying Agencies	19.0	19.0	.....	.....	.....	$30.0			
541840	1.9	18.2	0.8	.....	.....	0.758	.....	7.0	7.0
Media Representatives	10.0	5.0	5.0	.....	.....	$10.0			
541850	3.9	134.2	2.2	44.9	928.8	0.881	.....	25.5	7.0
Display Advertising	19.0	35.5	19.0	.....	19.0	$35.5			
541860	4.0	45.7	1.4	.....	.....	0.799	.....	19.0	7.0
Direct Mail Advertising	19.0	14.0	14.0	.....	.....	$19.0			
541870	3.2	52.4	1.3	32.7	201.1	0.849	.....	19.0	7.0
Advertising Material Distribution Services.	14.0	14.0	10.0	.....	.....	$35.5			
541890	1.6	26.2	0.5	12.5	383.0	0.746	.....	7.0	7.0
Other Services Related to Advertising.	7.0	7.0	5.0	.....	.....	$10.0			
541910	3.2	51.7	1.1	.....	.....	0.832	5.4	19.0	7.0
Marketing Research and Public Opinion Polling.	14.0	14.0	7.0	.....	.....	$30.0			
541921	0.5	50.9	0.2	.....	.....	0.563	.....	7.0	7.0
Photography Studios, Portrait.	5.0	14.0	5.0	.....	.....	$5.0			
541922	0.5	3.3	0.2	6.5	31.8	0.494	.....	5.0	7.0
Commercial Photography	5.0	5.0	5.0	.....	.....	$5.0			
541930	1.0	23.8	.....	26.9	123.8	0.752	1.6	7.0	7.0
Translation and Interpretation Services.	5.0	5.0	.....	.....	.....	$10.0			
541940	0.9	17.4	0.2	.....	.....	0.431	.....	5.0	7.0
Veterinary Services	5.0	5.0	5.0	.....	.....	$5.0			
541990	0.9	24.1	0.3	16.7	696.2	0.740	−34.7	$7.0	$7.0
All Other Professional, Scientific and Technical Services.	5.0	5.0	5.0	.....	.....	$7.0	$14.0		
811212	1.7	49.0	0.5	.....	.....	0.832	−11.2	$19.0	$25.0
Computer and Office Repair and Maintenance.	7.0	14.0	5.0	.....	.....	$30.0	$30.0		

Common Size Standards

When many of the same businesses operate in multiple industries, SBA believes that a common size standard can be appropriate for these industries even if the industry and relevant program data support different size standards. SBA has established a common size standard for Computer Systems Design and Related Services industries (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the "exception"), and NAICS 811212.

In response to public comments to its 1998 proposed rule (63 FR 5480), SBA also established a common size standard for certain Architectural, Engineering (A&E) and Related Services industries (NAICS 541310, NAICS 541330 (excluding the "exceptions"), Map Drafting which is identified as "exception" under NAICS 541340, NAICS 541360 and NAICS 541370). It is very likely that firms that have expertise in architectural, engineering and surveying activities are also likely to be capable of performing drafting work. Similarly, general architectural firms are very likely to have expertise in

landscape architectural services. Industry data also show a lot of similarities among architectural, landscape architectural, engineering, drafting and surveying industries. Therefore, in this proposed rule, SBA applies the A&E common size standard to the rest of the industries in the A&E Industry Group (NAICS 5413), including NAICS 541320, NAICS 541340, NAICS 541350 and NAICS 541380.

In addition to Computer Systems Design and Related Services and A&E and Related Services, in this proposed rule, SBA considers, as an alternative to a separate size standard for each industry, common size standards for industries under several other NAICS Industry Groups as shown in Table 4. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Industry Group using the same method as described above. These results are provided in Table 5.

TABLE 4—INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Industry group: NAICS codes	Industry group title	Industries: 6-digit NAICS codes
5411	Legal Services	541110, 451191, 541199.
5412	Accounting, Tax Preparation, Bookkeeping and Payroll Services.	541211, 541213, 541214, 541219.
5413	Architectural, Engineering and Related Services	541310, 541320, 541330 (excluding "exceptions"), 541340, 541350, 541360, 541370, 541380.
5414	Specialized Design Services	541410, 541420, 541430, 541490.
5415, 811212	Computer Systems Design and Related Services + Computer and Office Machine Repair and Maintenance.	541511, 541512, 541513, 541519 (excluding "exception"), 811212.
5416	Management, Scientific and Technical Consulting Services.	541611, 541612, 541613, 541614, 541618, 541620, 541690.
5418	Advertising and Related Services	541810, 541820, 541830, 541840, 541850, 541860, 541870, 541890.
5419	Other Professional, Scientific, and Technical Services	541910, 541921, 541922, 541930, 541940, 541990.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY GROUP (MILLIONS OF DOLLARS)

(1) NAICS code/Industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard
5411	$1.3	$90.0	$0.3	2.4%	$1,423.1	0.755	−14.6%	10.0
Legal Services	5.0	25.5	5.0	.....	.....	$10.0	$10.0	.....
5412	1.1	66.1	0.5	20.3%	6,033.6	0.781	−1.6%	14.0
Accounting, Tax Preparation, Bookkeeping and Payroll Services	5.0	19.0	5.0	.....	.....	$19.0	.....	.....
5413	2.5	84.3	1.0	.....	.....	0.837	−6.0%	19.0
Architectural, Engineering and Related Services	10.0	25.5	7.0	.....	.....	$30.0	.....	.....
5414	0.7	5.0	0.2	2.2%	130.0	0.583	−40.3%	7.0
Specialized Design Services	5.0	5.0	5.0	.....	.....	$5.0	$14.0	.....
5415 + 811212	2.6	122.3	0.9	.....	.....	0.876	1.3%	25.5
Computer Systems Design and Related Services + Computer and Office Machine Repair and Maintenance	10.0	35.5	7.0	.....	.....	$35.5	.....	.....
5416	1.4	57.1	0.4	.....	.....	0.805	−14.8%	14.0
Management, Scientific and Technical Consulting Services	7.0	14.0	5.0	.....	.....	$25.5	$10.0	.....
5418	2.3	51.5	0.7	13.7%	2,854.1	0.806	−5.3%	14.0
Advertising and Related Services	10.0	14.0	5.0	.....	.....	$25.5	.....	.....
5419	1.0	25.1	0.3	6.7%	1,085.4	0.650	−44.9%	7.0
Other Professional, Scientific, and Technical Services	5.0	5.0	5.0	.....	.....	$5.0	$14.0	.....

Special Considerations

1. Three Sub-Industry Categories (or "exceptions") under NAICS 541330, Engineering Services

Currently, NAICS 541330 has four size standards that apply to Federal contracts for different types of engineering services. The $4.5 million size standard is for general engineering services, while the other three (*i.e.,* "exceptions") apply to specialized types of engineering services that the Federal government procures. They apply only to Federal contracts for those services. The lack of relevant data at the sub-industry level is a challenge to determine whether these size standards ("exceptions") should be revised or left unchanged. Because of that, SBA did not review those exceptions in the February 3, 1998 proposed rule (63 FR 5480) and SBA did not change these size standards in the May 14, 1999 final rule (64 FR 26275). However, SBA has increased these size standards over the years for inflation. The latest inflation adjustment was effective August 18, 2008 (73 FR 41237 (July 18, 2008)).

As noted previously, the data from the Economic Census special tabulation are limited down to the 6-digit NAICS industry level and hence do not provide data to assess economic characteristics at the sub-industry level. For example, the Economic Census data for NAICS 541330 are aggregates of both general engineering services and specialized engineering services under the three

"exceptions." Thus, the results based on the Economic Census data may not accurately reflect the characteristics of businesses providing specialized services included under those "exceptions."

To determine whether the Agency should propose revising the three exceptions under NAICS 541330, SBA evaluated the data from FPDS–NG and CCR. From FPDS–NG, SBA first identified PSCs that correspond to each specific sub-industry activity or "exception" under that NAICS code and then identified firms that are active in Federal contracting involving those PSCs. The data for fiscal year 2008 (the latest year for which the detailed CCR data are available) showed numerous firms doing contracts under Military and Aerospace Equipment and Military Weapons and Marine Engineering and Naval Architecture. SBA analyzed those firms' revenue and employment data from CCR and contract dollars from FPDS–NG to evaluate industry and Federal procurement factors. These results in Table 3 support a size standard of $25.5 million for both Military and Aerospace Equipment and Military Weapons and Marine Engineering and Naval Architecture. However, SBA proposes to retain the current standard of $27.0 million for Military and Aerospace Equipment and Military Weapons as SBA is not proposing to lower any size standards in view of the current economic conditions. The FPDS–NG showed very few actions involving Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992. This made it difficult to evaluate industry and Federal contracting factors and to derive a separate size standard for that sub-industry category. Currently, both Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992 and contracts for Military and Aerospace Equipment and Military Weapons both have the same $27.0 million size standard. Thus, SBA proposes to retain the current $27.0 million size standard for Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992. SBA proposes to increase the size standard for Marine Engineering and Naval Architecture to $25.5 million as supported by the data. SBA invites comments along with supporting information on this proposal.

2. Map Drafting Services

Map Drafting Services is currently identified as an "exception" under NAICS 541340, Drafting Services. Prior to adopting NAICS for its size standards, SBA had established separate but common size standards for Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services as exceptions under Standard Industrial Classification (SIC) code 7389, Business Services, N.E.C. (Not Elsewhere Classified). Size standards at the sub-industry levels ("exceptions") are primarily intended for Federal government procurement purposes. However, for NAICS 541340 (which includes Map Drafting Services), there were less than $10 million total contracting dollars annually during fiscal years 2007–2009, as compared to more than $2 billion in total revenue for the industry. Therefore, SBA feels that there is no need for a separate size standard for Map Drafting Services for Federal procurement and proposes to remove it as an exception to NAICS 541340. The proposed $14.0 million common A&E size standard will apply to Drafting Services, including Map Drafting Services. SBA invites comments along with supporting information on this proposal.

3. Information Technology Value Added Resellers

On July 24, 2002 SBA proposed establishing a 500 employee size standard for Information Technology Value Added Resellers (ITVAR) as a new sub-industry ("exception") under NAICS 541519 (67 FR 48419). This was to better reflect the Federal government's acquisition of computer hardware and software services. In response to public comments and the results from further analyses of relevant industry data, on December 29, 2003, SBA published the final rule adopting 150 employee size standard for ITVAR (68 FR 74833). In this proposed rule, SBA proposes to retain the current 150 employee size standard for ITVAR. SBA invites comments along with supporting information on this proposal.

4. Computer and Office Machine Repair and Maintenance (NAICS 811212)

The Computer and Office Machine Repair and Maintenance industry (NAICS 811212) currently has the same size standard as the Computer Design and Related Services Industry Group (NAICS 5415). Therefore, in its October 21, 2009 proposed rule for Other Services Sector (74 FR 53941), SBA did not review the size standard for NAICS 811212 and proposed to retain the current $25 million size standard until it reviews the Computer Design and Related Services Industries in NAICS Sector 54. The history of the Computer and Office Machine Repair industry supports this decision. Under the SIC System, SBA had established a common size standard for all industries in SIC Industry Group 737, "Computer Programming, Data Processing and Other Computer Related Services" (56 FR 38364 (August 13, 1991) and 57 FR 27907 (June 23, 1992)). In 1997, SBA replaced the SIC System with the NAICS and moved most of the industries in SIC Sector 737 to NAICS Sector 54, Professional, Scientific and Technical Services. However, the Computer Maintenance and Repair activity was moved to NAICS Sector 81, Other Services, and was combined with Computer and Office Machine Repair Maintenance services to form NAICS 811212. Because Computer Maintenance and Repair was the largest component of the new industry, SBA continued to apply the size standard for computer services (64 FR 57188 (October 22, 1999) and 65 FR 30836 (May 15, 2000)). SBA continues to believe that a common size standard should apply to all of the computer services related industries, including NAICS 811212. SBA welcomes comments on whether it should continue to apply the same size standard for computer services to the Computer and Office Machine Repair Maintenance industry or consider a different size standard based on its industry characteristics.

5. Research and Development (R&D) in Biotechnology (NAICS 541711) and R&D in the Physical, Engineering and Life Sciences (Except Biotechnology) (NAICS 541712)

The current size standards for NAICS 541711 and NAICS 541712 (including three sub-industry groups or "exceptions") are based on number of employees. Moreover, footnote #11 to SBA's Table of Size Standards states that for R&D contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry. For example, the size standard for aircraft related R&D contracts under NAICS 541712 is 1,500 employees, the same as that for Aircraft Manufacturing (NAICS 336411). Therefore, SBA plans to review the size standards for NAICS 541711 and NAICS 541712 when it reviews the size standards for the Manufacturing Sector (NAICS Sector 31–33). SBA proposes, therefore, to leave the size standards for those two industries at their current levels until it reviews NAICS Sector 31–33.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact

of new or revised standards on SBA's loan programs. SBA examined 7(a) Business Loan Program data for fiscal years 2007–2009 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through that program. For the industries reviewed in this proposed rule, users of SBA's 7(a) Business Loan Program are mostly much smaller than the current size standards. Based on that analysis, none of the size standards for these industries needs an adjustment based on this factor.

Proposed Changes to Size Standards

The results of SBA analyses of industry specific size standards from Table 3 and results for common size standards from Table 5 are summarized in Table 6. In terms of industry specific size standards, the results support increases in size standards in 22 industries and one sub-industry, decreases in 14 industries and one sub-industry and no changes in 10 industries. Similarly based on common size standards, the results would support increases in 36 industries and one sub-industry, decreases in two sub-industries and no changes in 10 industries.

SBA believes that lowering small business size standards is not in the best interests of small businesses under current economic conditions. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost a total of nearly 8.5 million non-farm jobs during 2008–2009. In response, Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate has been 9.4 percent or higher since May 2009 and is forecast to remain above 9 percent through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts, including recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS codes	NAICS industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
541110	Offices of Lawyers	$10.0	$10.0	$7.0
541191	Title Abstract and Settlement Offices	5.0	10.0	7.0
541199	All Other Legal Services	7.0	10.0	7.0
541211	Offices of Certified Public Accountants	14.0	14.0	8.5
541213	Tax Preparation Services	14.0	14.0	7.0
541214	Payroll Services	35.5	14.0	8.5
541219	Other Accounting Services	7.0	14.0	8.5
541310	Architectural Services	7.0	19.0	4.5
541320	Landscape Architectural Services	5.0	19.0	7.0
541330	Engineering Services	25.5	19.0	4.5
Except	Military and Aerospace Equipment and Military Weapons	25.5		27.0
Except	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	NA		27.0
Except	Marine Engineering and Naval Architecture	25.5		18.5
541340	Drafting Services	14.0	19.0	7.0
Except	Map Drafting	NA		4.5
541350	Building Inspection Services	7.0	19.0	7.0
541360	Geophysical Surveying and Mapping Services	25.5	19.0	4.5
541370	Surveying and Mapping (except Geophysical) Services	5.0	19.0	4.5
541380	Testing Laboratories	10.0	19.0	12.0
541410	Interior Design Services	5.0	7.0	7.0
541420	Industrial Design Services	5.0	7.0	7.0
541430	Graphic Design Services	5.0	7.0	7.0
541490	Other Specialized Design Services	5.0	7.0	7.0
541511	Custom Computer Programming Services	14.0	25.5	25.0
541512	Computer Systems Design Services	25.5	25.5	25.0
541513	Computer Facilities Management Services	35.5	25.5	25.0
541519	Other Computer Related Services	19.0	25.5	25.0
Except	Information Technology Value Added Resellers	NA		150 employees
541611	Administrative Management and General Management Consulting Services.	14.0	14.0	7.0
541612	Human Resources Consulting Services	14.0	14.0	7.0
541613	Marketing Consulting Services	7.0	14.0	7.0
541614	Process, Physical Distribution and Logistics Consulting Services	19.0	14.0	7.0
541618	Other Management Consulting Services	7.0	14.0	7.0
541620	Environmental Consulting Services	5.0	14.0	7.0
541690	Other Scientific and Technical Consulting Services	10.0	14.0	7.0
541720	Research and Development in the Social Sciences and Humanities	19.0		7.0
541810	Advertising Agencies	14.0	14.0	7.0
541820	Public Relations Agencies	7.0	14.0	7.0
541830	Media Buying Agencies	25.5	14.0	7.0
541840	Media Representatives	7.0	14.0	7.0

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS codes	NAICS industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
541850	Display Advertising	25.5	14.0	7.0
541860	Direct Mail Advertising	19.0	14.0	7.0
541870	Advertising Material Distribution Services	19.0	14.0	7.0
541890	Other Services Related to Advertising	7.0	14.0	7.0
541910	Marketing Research and Public Opinion Polling	19.0	7.0	7.0
541921	Photography Studios, Portrait	7.0	7.0	7.0
541922	Commercial Photography	5.0	7.0	7.0
541930	Translation and Interpretation Services	7.0	7.0	7.0
541940	Veterinary Services	5.0	7.0	7.0
541990	All Other Professional, Scientific and Technical Services	7.0	7.0	7.0
811212	Computer and Office Repair and Maintenance	19.0	25.5	25.0

Reducing size standards would decrease the number of firms that can participate in Federal financial and procurement assistance. Furthermore, lowering size standards for those 14 industries would cut off nearly 1,200 currently eligible small business firms from those very programs, which would run counter to what the Federal government is trying to do for small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, SBA has decided not to propose to reduce the size standards for those industries. SBA has decided to retain the current size standards in this proposed rule. SBA invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions. SBA intends for the proposed size standards, if adopted, to remain in effect unless and until it receives information or data that suggests a change is needed.

Based on comparisons between industry specific size standards and common size standards within each Industry Group, SBA finds that common size standards are more appropriate for several reasons. First, analyzing industries at a more aggregated Industry Group level simplifies size standards analysis and the results are more consistent among related industries. Second, in most cases, industries within each Industry Group currently have the same size standards and it is better to keep the revised size standards also the same. Third, within each Industry Group many of the same businesses tend to operate in the same multiple industries. Establishing the common size standard would, therefore, better reflect the Federal marketplace in those industries than establishing different size standards for each industry. Fourth, industry specific size standards and common size standards are mostly within a reasonably close range.

For industries where both industry specific size standards and common size standards have been derived, SBA, for the above reasons, proposes to apply common size standards. For industries (including sub-industries) where common size standards have not been estimated, SBA proposes to apply industry specific size standards.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and Jobs Act. Therefore, SBA proposes to retain the current size standards for those industries for which its analyses suggested decreasing their size standards. Thus, of the 45 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81 that were reviewed in this proposed rule, SBA proposes to increase size standards for 36 industries and one sub-industry and retain current standards for 10 industries and two sub-industries. As discussed above, SBA also proposes to eliminate Map Drafting Services as an "exception" to NAICS 541340, Drafting Services. Industries and their proposed size standards are shown in Table 7.

TABLE 7—SUMMARY OF PROPOSED REVISIONS TO SIZE STANDARDS

NAICS codes	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
541110	Offices of Lawyers	$10.0	$7.0
541191	Title Abstract and Settlement Offices	10.0	7.0
541199	All Other Legal Services	10.0	7.0
541211	Offices of Certified Public Accountants	14.0	8.5
541213	Tax Preparation Services	14.0	7.0
541214	Payroll Services	14.0	8.5
541219	Other Accounting Services	14.0	8.5
541310	Architectural Services	19.0	4.5
541320	Landscape Architectural Services	19.0	7.0
541330	Engineering Services	19.0	4.5
Except	Marine Engineering and Naval Architecture	25.5	18.5
541340	Drafting Services	19.0	7.0
541350	Building Inspection Services	19.0	7.0
541360	Geophysical Surveying and Mapping Services	19.0	4.5
541370	Surveying and Mapping (except Geophysical) Services	19.0	4.5

TABLE 7—SUMMARY OF PROPOSED REVISIONS TO SIZE STANDARDS—Continued

NAICS codes	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
541380	Testing Laboratories	19.0	12.0
541511	Custom Computer Programming Services	25.5	25.0
541512	Computer Systems Design Services	25.5	25.0
541513	Computer Facilities Management Services	25.5	25.0
541519	Other Computer Related Services	25.5	25.0
541611	Administrative Management and General Management Consulting Services	14.0	7.0
541612	Human Resources Consulting Services	14.0	7.0
541613	Marketing Consulting Services	14.0	7.0
541614	Process, Physical Distribution and Logistics Consulting Services	14.0	7.0
541618	Other Management Consulting Services	14.0	7.0
541620	Environmental Consulting Services	14.0	7.0
541690	Other Scientific and Technical Consulting Services	14.0	7.0
541720	Research and Development in the Social Sciences and Humanities	19.0	7.0
541810	Advertising Agencies	14.0	7.0
541820	Public Relations Agencies	14.0	7.0
541830	Media Buying Agencies	14.0	7.0
541840	Media Representatives	14.0	7.0
541850	Display Advertising	14.0	7.0
541860	Direct Mail Advertising	14.0	7.0
541870	Advertising Material Distribution Services	14.0	7.0
541890	Other Services Related to Advertising	14.0	7.0
811212	Computer and Office Repair and Maintenance	25.5	25.0

Evaluation of Dominance in Field of Operation

In the industries and sub-industries for which SBA proposes to revise size standards, there are no individual firms at or below the proposed size standard large enough to dominate their field of operation. A firm at the proposed size standard in each of these industries generates less than two percent of total industry receipts. This level of market share effectively precludes a firm at or below the proposed size standard from exerting a controlling effect on the industry.

Request for Comments

SBA invites public comments on the proposed rule, especially on the following areas.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5.0 million, $7.0 million, $10.0 million, $14.0 million, $19.0 million, $25.5 million, $30.0 million and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate, or suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry or sub-industry. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether an employee based standard for certain industries or sub-industries is a more suitable measure of size and what that employee level should be.

3. For industries within several Industry Groups, including Legal Services (NAICS 5411), Accounting and Related Services (NAICS 5412), A&E and Related Services (NAICS 5413, except for the exceptions), Specialized Design Services (NAICS 5414), Computer Related Services (NAICS 5415 and NAICS 811212), Consulting Services (NAICS 5416), Advertising and Related Services (NAICS 5418) and Other Professional, Scientific, and Technical Services (NAICS 5419), SBA proposes a common size standard. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt a common size standard for those industries or establish a separate size standard for each industry.

b. Whether the proposed common size standards for those industries are at the correct levels or what are more appropriate size standards if the proposed standards are not suitable.

4. SBA proposes to increase the size standard for Marine Engineering and Naval Architecture, one of the three exceptions under NAICS 541330, to $25.5 million from $18.5 million. For the other two exceptions under NAICS 541330, namely Military and Aerospace Equipment and Military Weapons and the Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992, SBA proposes to retain the current $27.0 million size standard. SBA requests comments, along with supporting information, on whether the proposed size standards are appropriate or suggestions on alternative size standards if the proposed standards are inappropriate.

5. SBA feels that there is no need for a separate size standard for Map Drafting Services for Federal procurement and proposes to remove it as an exception to NAICS 541340. As stated above, there were less than $10 million in total contracting dollars annually during fiscal years 2007–2009, as compared to more than $2 billion in total revenue for the industry in this NAICS code. Given this relatively insignificant level of Federal contracting for Map Drafting Services (an "exception" under NAICS 541340, Drafting Services), SBA proposes to eliminate this exception. SBA invites comments on whether SBA should remove or retain the Map Drafting Services as an exception under NAICS 541340.

6. SBA's proposed size standards are based on its evaluation of five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and the level and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider for assessing industry characteristics when evaluating or revising size standards.

SBA also seeks information on relevant data sources, if available.

7. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

8. For some industries, SBA proposes to increase the existing size standards by a large amount (*e.g.,* for certain A&E industries, proposed size standards are more than three times the current size standards) while for others the proposed increases are modest. SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

9. SBA requests comments on whether it should lower size standards. SBA has proposed not to reduce small business size standards where applying its "Size Standards Methodology," might suggest lowering them. Rather, SBA opted to retain the current standards for those industries. SBA explained its reasons for this in the Supplementary Information above. SBA seeks comments, as it does in its "Size Standards Methodology" (*see* Policy Issue i on page 47) on whether it should reduce size standards at all. Because this is a policy issue, please provide documentation to reinforce your comments either in support of or opposition to this issue.

10. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 12988, 13132 and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards for a number of industries in NAICS Sector 54, Professional, Scientific and Technical Services, will better reflect the economic characteristics of small businesses and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans and Federal procurement programs intended for small businesses. Federal procurement provides targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive. In 36 industries and one sub-industry for which SBA has proposed increasing size standards, SBA estimates that about 9,450 additional firms will obtain small business status and become eligible for these programs. That number is 1.2 percent of the total number of firms in those industries defined as small under the current standards. If adopted as proposed, this would increase the small business share of total industry receipts in those industries from about 35.0 percent under the current size standards to 41.0 percent.

The benefits of SBA's proposed increased size standards will accrue to three groups: (1) Businesses that are above the current size standards will gain small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

During fiscal years 2007–2009, nearly 90 percent of Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 36 industries for which SBA has proposed to increase size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could potentially obtain Federal contracts totaling up to $650 million per year under SBA's small business, 8(a), HUBZone, WOSB, and SDVO SBC Programs and other unrestricted procurements. The added competition for many of these procurements also could result in lower prices to the Government for procurements reserved for small

businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, SBA estimates 75–100 additional loans totaling $15 million to $20 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in an increase in small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly the extent of their number and the total amount loaned.

The newly defined small businesses would also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

To the extent that 9,450 additional firms could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database and additional firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, and SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone and SDB businesses that receive price evaluation preferences. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standards may have distributional effects among large and small businesses. Although SBA cannot estimate the actual outcome of the gains and losses among small and large businesses with certainty, it can identify several likely impacts. There will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS–NG data only identify the size of businesses receiving Federal contracts as small business or other than small businesses; FPDS–NG does not provide the exact size of the business.

The proposed revisions to the existing size standards for Professional, Scientific and Technical Services industries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups, representing various industry Sectors including Professional Scientific and Technical Services. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. Several of these groups expressed concerns and suggestions for size standards for a number of industries in NAICS Sector 54.

Also, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) and a several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of NAICS Sector 54, Professional, Scientific and Technical Services, is consistent with Sector 6 of EO 13653, 6. calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010 the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed

review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in NAICS Sector 54, Professional, Scientific and Technical Services. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans and other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA's description and estimate of the number of small entities to which the rule will apply? (3) what are the projected reporting, record keeping and other compliance requirements of the rule? (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

As described above in the supplementary section, SBA reviewed and modified size standards for NAICS 541310, NAICS 541330, NAICS 541340, NAICS 541360 and NAICS 541370 in 1998 and 1999. Most of the remaining size standards in NAICS Sector 54, Professional, Scientific and Technical Services, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 9,450 additional firms will become small because of increases in size standards in 36 industries and one sub-industry. That represents 1.2 percent of total firms in those industries and sub-industries. This will result in an increase in the small business share of total industry receipts for this Sector from about 35.0 percent under the current size standard to 41.0 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries because businesses in this Sector have been requesting SBA to increase these standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

(3) What are the projected reporting, record keeping and other compliance requirements of the rule and an estimate of the classes of small entities, which will be subject to the requirements?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the CCR database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); and Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

2. In § 121.201, in the table, revise the entries for "541110", "541191", "541199", "541211", "541213", "541214", "541219", "541310", "541320", "541330 introductory entry and third sub-entry", "541340", "541350", "541360", "541370", "541380", "541511", "541512", "541513", "541519 introductory entry", "541611", "541612", "541613", "541614", "541618", "541620", "541690", "541720", "541810", "541820", "541830", "541840", "541850", "541860", "541870", "541890", and "811212" to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
541110	Offices of Lawyers	$10.0	
541191	Title Abstract and Settlement Offices	10.0	
541199	All Other Legal Services	10.0	
541211	Offices of Certified Public Accountants	14.0	
541213	Tax Preparation Services	14.0	
541214	Payroll Services	14.0	
541219	Other Accounting Services	14.0	
541310	Architectural Services	19.0	
541320	Landscape Architectural Services	19.0	
541330	Engineering Services	19.0	
*	* * * * *	*	*
Except,	Marine Engineering and Naval Architecture	25.5	
541340	Drafting Services	19.0	
541350	Building Inspection Services	19.0	
541360	Geophysical Surveying and Mapping Services	19.0	
541370	Surveying and Mapping (except Geophysical) Services	19.0	
541380	Testing Laboratories	19.0	
*	* * * * *	*	*
541511	Custom Computer Programming Services	25.5	
541512	Computer Systems Design Services	25.5	
541513	Computer Facilities Management Services	25.5	
541519	Other Computer Related Services	25.5	
*	* * * * *	*	*
541611	Administrative Management and General Management Consulting Services	14.0	
541612	Human Resources Consulting Services	14.0	
541613	Marketing Consulting Services	14.0	
541614	Process, Physical Distribution and Logistics Consulting Services	14.0	
541618	Other Management Consulting Services	14.0	
541620	Environmental Consulting Services	14.0	
541690	Other Scientific and Technical Consulting Services	14.0	
*	* * * * *	*	*
541720	Research and Development in the Social Sciences and Humanities	19.0	
541810	Advertising Agencies [10]	[10] 14.0	
541820	Public Relations Agencies	14.0	
541830	Media Buying Agencies	14.0	
541840	Media Representatives	14.0	
541850	Display Advertising	14.0	
541860	Direct Mail Advertising	14.0	
541870	Advertising Material Distribution Services	14.0	
541890	Other Services Related to Advertising	14.0	
*	* * * * *	*	*
811212	Computer and Office Repair and Maintenance	25.5	
*	* * * * *	*	*

Dated: March 9, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–5876 Filed 3–15–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM400 Special Conditions No. 25–11–09–SC]

Special Conditions: Boeing Model 747–8/–8F Airplanes, Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes to amend Special Conditions No. 25–388–SC for the Boeing Model 747–8/–8F airplanes. These special conditions were previously issued July 29, 2009, and became effective September 10, 2009. These special conditions are being amended to include additional criteria addressing the Outboard Aileron Modal Suppression System. The 747–8/–8F will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include their effects on the structural performance. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the 747–8/–8F airplanes.

DATES: Comments must be received on or before April 15, 2011.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM400, 1601 Lind Avenue SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM400. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe & Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2279; e-mail *Carl.Niedermeyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GEnx –2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 605 passengers. The Model 747–8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

These special conditions were originally issued July 29, 2009, and published in the **Federal Register** on August 12, 2009 (74 FR 40479).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that Model 747–8 and 747–8F airplanes (hereafter referred as 747–8/–8F) meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these model airplanes.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–8/–8F is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the

aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards. A special condition is needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state.

The Boeing 747–8F airplane exhibits an aeroelastic mode of oscillation that is self-excited and does not completely damp out after an external disturbance. The sustained oscillation (also known as a limit cycle oscillation or limit cycle flutter) is caused by an unstable aeroelastic mode that is prevented from becoming a divergent oscillation due to one or more nonlinearities that exist in the airplane.

While the sustained oscillation is not divergent, the FAA considers it to be an aeroelastic instability. Boeing has proposed the addition of an Outboard Aileron Modal Suppression (OAMS) system to the fly-by-wire (FBW) flight control system to reduce, but not eliminate, the amplitude of the sustained oscillation and control the aeroelastic instability.

Section 25.629 requires the airplane to be free of any aeroelastic instability, including flutter. It also requires the airplane to remain flutter free after certain failures. The regulations do not anticipate the use of systems that control flutter modes but do not completely suppress them. The use of the OAMS system is a novel and unusual design feature that the airworthiness standards do not adequately address. The FAA believes such systems can be used to ensure that limit cycle (non-divergent) flutter is kept to safe levels. Therefore, the FAA proposes a special condition that addresses this particular sustained oscillation characteristic and provides the necessary standards that permit the use of such active flutter control systems.

Applicability

As discussed above, this proposed special condition is applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, this proposed special condition would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this proposed Special Condition is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following amendment to Special Conditions 25–388–SC as part of the type certification basis for the 747–8/–8F airplanes. The standards in Section A have been modified to incorporate the reference to Section C and remove "flutter control systems" from the applicability of this special condition. Section B was already adopted in Special Conditions 25–388–SC and is included for reference. Comments are invited on the amended Section A and the proposed text of Section C, Outboard Aileron Modal Suppression System.

A. General

The Boeing Model 747–8/–8F airplanes are equipped with automatic control systems that affect the airplane's structural performance, either directly or as a result of a failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of Subparts C and D of part 25. Except as provided in Section C of this special condition, the following criteria must be used for showing compliance with this special condition for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If this special condition is used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined here only address the direct structural consequences of the system responses and performances and cannot be considered in isolation; however, they should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structural elements whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this special condition.

2. Depending on the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

3. The following definitions are applicable to this special condition.

(a) *Structural performance:* Capability of the airplane to meet the structural requirements of part 25.

(b) *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the airplane flight manual (AFM) (*e.g.,* speed limitations, avoidance of severe weather conditions).

(c) *Operational limitations:* Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload and Master Minimum Equipment List (MMEL) limitations).

(d) *Probabilistic terms:* The probabilistic terms (probable, improbable, extremely improbable) used in this special condition are the same as those used in § 25.1309.

(e) *Failure condition:* The term failure condition is the same as that used in § 25.1309, however this special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins). The system failure condition includes consequential or cascading effects resulting from the first failure.

B. Effects of Systems on Structures

1. *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structural elements.

2. *System fully operative.* With the system fully operative, the following apply:

(a) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of

such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(b) The airplane must meet the strength requirements of part 25 (*i.e.,* static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(c) The airplane must meet the aeroelastic stability requirements of § 25.629.

3. *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(a) At the time of occurrence, starting from 1-g level flight conditions, a realistic scenario including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(1) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

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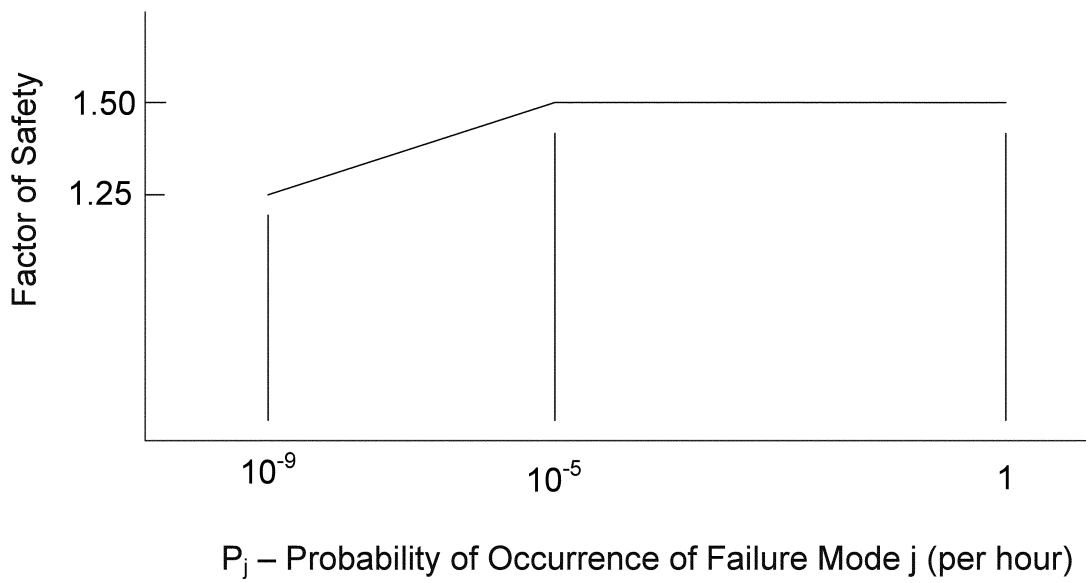
Figure 1

Factor of Safety at the Time of Occurrence



(2) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph 3(a)(1). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(3) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(4) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of the affected structural elements.

(b) For continuation of flight, for an airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(1) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(i) the limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(ii) the limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(iii) the limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

(iv) the limit yaw maneuvering conditions specified in § 25.351.

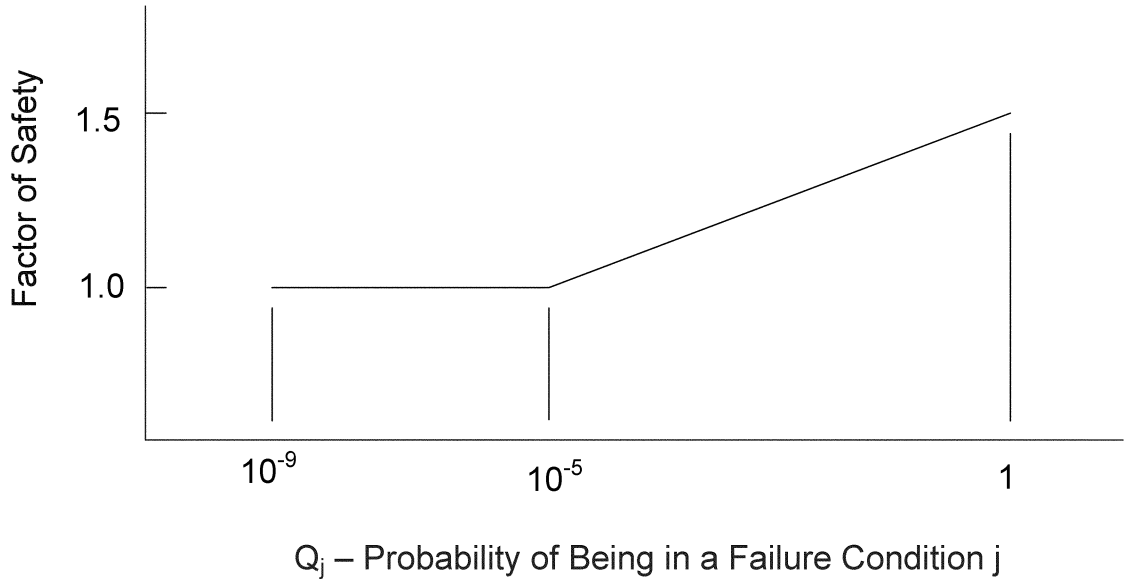
(v) the limit ground loading conditions specified in §§ 25.473, 25.491 and 25.493.

(2) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (3)(b)(1) of the special condition multiplied by a factor of safety depending on the probability of being in

this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of Safety for Continuation of Flight



$Q_j = (T_j)(P_j)$

where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

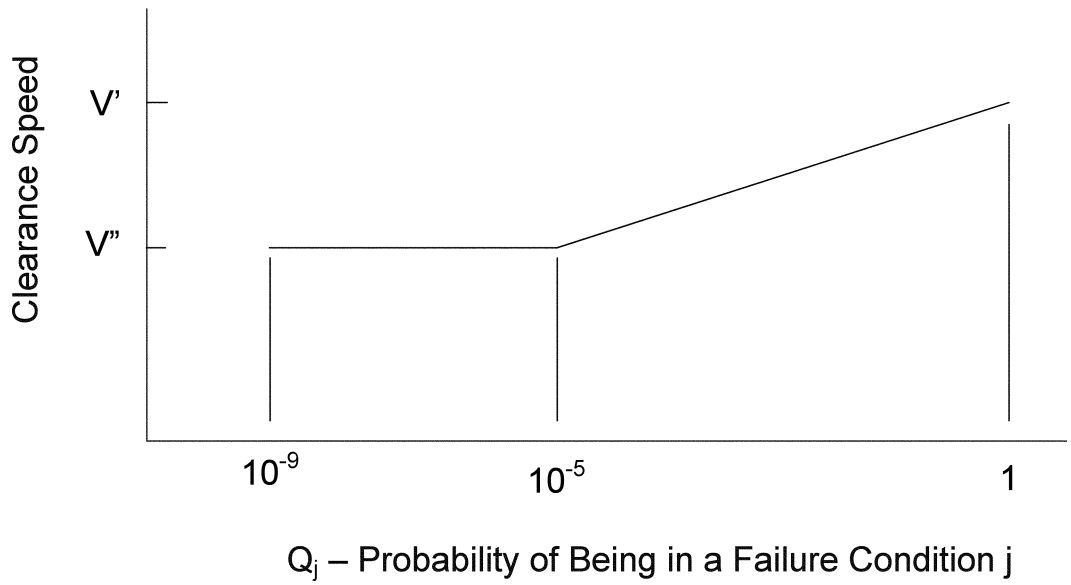
(3) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (3)(b)(1) of the special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(4) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(5) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance Speed



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V′ = Clearance speed as defined by § 25.629(b)(2).

V″ = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$

where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(6) Freedom from aeroelastic instability must also be shown up to V' in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(c) Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. *Failure indications.* For system failure detection and indication, the following apply:

(a) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These Certification Maintenance Requirements (CMRs) must be limited to components that are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(b) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V", must be signaled to the crew during flight.

5. *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met, including the provisions of paragraph 2 for the dispatched condition, and paragraph 3 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

C. Outboard Aileron Modal Suppression System

1. In general, this special condition applies to fly-by-wire active flutter suppression systems that are intended to operate on a certain type of aeroelastic instability. This type of instability is characterized by a low frequency, self-excited, sustained

oscillation of an aeroelastic vibration mode that is shown to be a stable limit cycle oscillation (LCO), with the system operative and inoperative. (An LCO is considered "stable" if it maintains the same frequency and amplitude for a given excitation input and flight condition.) In addition, the type of sustained oscillation covered by this special condition must not be a hazard to the airplane nor its occupants with the active system failed. These systems must be shown to reduce the amplitude of the sustained oscillation to acceptable levels and effectively control the aeroelastic instability.

Specifically, the following criteria address the existence of such a sustained oscillation on the Boeing Model 747–8/–8F airplanes and the Outboard Aileron Modal Suppression (OAMS) system that will be used to control it.

2. In lieu of the requirements contained in § 25.629, the existence of a sustained, or limit cycle, oscillation that is controlled by an active flight control system is acceptable, provided that the following requirements are met:

(a) OAMS System Inoperative

(1) The sustained, or limit cycle, oscillation must be shown by test and analysis to be stable throughout the nominal aeroelastic stability envelope specified in § 25.629(b)(1) with the OAMS system inoperative. This should include the consideration of disturbances above the sustained amplitude of oscillation

(b) Nominal Conditions:

(1) With the OAMS system operative it must be shown that the airplane remains safe, stable, and controllable throughout the nominal aeroelastic stability envelope specified in § 25.629(b)(1) by providing adequate suppression of the aeroelastic modes being controlled. All applicable airworthiness and environmental requirements should continue to be complied with. Additionally, loads imposed on the airplane due to any amplitude of oscillation must be shown to have a negligible impact on structure and systems, including wear, fatigue and damage tolerance. The OAMS system must function properly in all environments that may be encountered.

(2) The applicant must establish by test and analysis that the OAMS system can be relied upon to control and limit the sustained amplitude of the oscillation to acceptable levels (per § 25.251) and control the stability of the aeroelastic mode. This should include the consideration of disturbances above the sustained amplitude of oscillation; maneuvering flight, icing conditions; manufacturing variations; Master Minimum Equipment List (MMEL) items; spare engine carriage; engine removed or inoperative ferry flights; and wear, repairs, and modifications throughout the service life of the airplane by:

(i) Analysis to the nominal aeroelastic stability envelope specified in § 25.629(b)(1), and

(ii) Flight flutter test to the V_{DF}/M_{DF} boundary. These tests must demonstrate that the airplane has a proper margin of damping for disturbances above the sustained amplitude of oscillation at all speeds up to V_{DF}/M_{DF}, and that there is no large and rapid reduction in damping as V_{DF}/M_{DF} is approached.

(iii) The structural modes must have adequate stability margins for any OAMS flight control system feedback loop at speeds up to the fail-safe aeroelastic stability envelope specified in § 25.629(b)(2).

(c) Failures, Malfunctions, and Adverse Conditions:

(1) For the OAMS system operative and failed, for any failure, or combination of failures not shown to be extremely improbable, and addressed by §§ 25.629(d), 25.571, 25.631, 25.671, 25.672, 25.901(c) or 25.1309 that results in LCO, it must be established by test or analysis up to the aeroelastic stability envelope specified in § 25.629(b)(2) that the LCO:

(i) is stable and decays to an acceptable limited amplitude once an external perturbing force is removed;

(ii) does not result in loads that would cause static, dynamic, or fatigue failure of structure during the expected exposure period;

(iii) does not result in repeated loads that would cause an additional failure due to wear during the expected exposure period that precludes safe flight and landing;

(iv) has, if necessary, sufficient indication of OAMS failure(s) and crew procedures to properly address the failure(s);

(v) does not result in a vibration condition on the flight deck that is severe enough to interfere with control of the airplane, ability of the crew to read the flight instruments, perform vital functions like reading and accomplishing checklist procedures, or to cause excessive fatigue to the crew;

(vi) does not result in adverse effects on the flight control system or on airplane stability, controllability, or handling characteristics (including airplane-pilot coupling (APC) per § 25.143) that would prevent safe flight and landing; and

(vii) does not interfere with the flight crew's ability to correctly distinguish vibration from buffeting associated with the recognition of stalls or high speed buffet.

(2) The applicant must show that particular risks such as engine failure, uncontained engine, or APU rotor burst, or other failures not shown to be extremely improbable, will not adversely or significantly change the aeroelastic stability characteristics of the airplane.

(3) No MMEL dispatch is allowed with the OAMS system inoperative.

Issued in Renton, Washington on March 9, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6073 Filed 3–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0231; Directorate Identifier 2011–CE–003–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 42 Airplanes

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

Cracks have been reportedly found on DA 42 Main Landing Gear (MLG) Damper-to-Trailing Arm joints during standard maintenance. Depending on environmental-, operating- and runway conditions, the affected MLG joint, Part Number (P/N) D60–3217–23–5x (4 different lengths are available), which is made of aluminum, is susceptible to cracking.

This condition, if not detected and corrected, may lead to failure of the joint and subsequent damage or malfunction of the MLG, possibly resulting in damage to the aeroplane during landing and injury to occupants.

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 May 2, 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 Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, *telephone:* +43 2622 26700; *fax:* +43 2622 26780; *e-mail: office@diamond-air.at; Internet: http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090; *e-mail: mike.kiesov@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–2011–0231; Directorate Identifier 2011–CE–003–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0020, dated February 7, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks have been reportedly found on DA 42 Main Landing Gear (MLG) Damper-to-Trailing Arm joints during standard maintenance. Depending on environmental-, operating- and runway conditions, the affected MLG joint, Part Number (P/N) D60–3217–23–5x (4 different lengths are available), which is made of aluminum, is susceptible to cracking.
>
> This condition, if not detected and corrected, may lead to failure of the joint and subsequent damage or malfunction of the MLG, possibly resulting in damage to the aeroplane during landing and injury to occupants.
>
> To address this unsafe condition, EASA issued AD 2010–0155 to require repetitive inspections of the MLG joint and, depending on findings, replacement with a serviceable part. Since that AD was issued, DAI developed an improved design MLG joint, P/N D64–3217–23–0x (also 4 different lengths available), which is made of steel and less susceptible to cracking.
>
> For the reasons described above, this new AD retains the requirements of EASA AD 2010–0155R1, which is superseded, and adds the terminating action requirement to modify the aeroplane by installing the improved steel part. This new AD also prohibits re-installation of the aluminum part.

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

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin No. MSB 42–088/2, dated February 3, 2011, and Work Instruction WI–MSB 42–088, dated February 3, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 162 products of U.S. registry. We also estimate that it would take about 1 work-hour 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 $729 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $131,868, or $814 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:

Diamond Aircraft Industries GmbH: Docket No. FAA–2011–0231; Directorate Identifier 2011–CE–003–AD.

Comments Due Date

(a) We must receive comments by May 2, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Diamond Aircraft Industries GmbH Model DA 42 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

Cracks have been reportedly found on DA 42 Main Landing Gear (MLG) Damper-to-Trailing Arm joints during standard maintenance. Depending on environmental-, operating- and runway conditions, the affected MLG joint, Part Number (P/N) D60–3217–23–5x (4 different lengths are available), which is made of aluminum, is susceptible to cracking.

This condition, if not detected and corrected, may lead to failure of the joint and subsequent damage or malfunction of the MLG, possibly resulting in damage to the aeroplane during landing and injury to occupants.

To address this unsafe condition, EASA issued AD 2010–0155 to require repetitive inspections of the MLG joint and, depending on findings, replacement with a serviceable part. Since that AD was issued, DAI developed an improved design MLG joint, P/N D64–3217–23–0x (also 4 different lengths available), which is made of steel and less susceptible to cracking.

For the reasons described above, this new AD retains the requirements of EASA AD 2010–0155R1, which is superseded, and adds the terminating action requirement to modify the aeroplane by installing the improved steel part. This new AD also prohibits re-installation of the aluminum part.

Actions and Compliance

(f) Unless already done, do the following actions following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–088/2, dated February 3, 2011; and Work Instruction WI–MSB 42–088, dated February 3, 2011:

(1) Within 100 hours time-in-service (TIS) after the effective date of this AD, replace each main landing gear (MLG) joint P/N D60–3217–23–5x with a MLG joint P/N D64–3217–23–0x.

(2) After the effective date of this AD, all replacements of MLG joint P/N D60–3217–23–5x must be done with MLG joint P/N D64–3217–23–0x.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: EASA originally established an initial and repetitive inspection of the MLG joint part. We are not establishing an initial or repetitive inspection, and instead we are just requiring a mandatory one-time replacement of the part within 100 hours TIS after the effective date of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI EASA AD No.: 2011–0020, dated February 7, 2011; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–088/2, dated February 3, 2011; and Work Instruction WI–MSB 42–088, dated February 3, 2011, for related information. For service information related to this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, *telephone:* +43 2622 26700; *fax:* +43 2622 26780; *e-mail: office@diamond-air.at; Internet: http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri on March 10, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6096 Filed 3–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0230; Directorate Identifier 2011–CE–004–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

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

As a result of fatigue-testing programme on Jetstream aeroplanes, cracks have been found on the main landing gear (MLG) fittings that embody modifications JM5218 or JM8003.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing, possibly resulting in a fuel tank rupture, consequent damage to the aeroplane or injury to the occupants.

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 May 2, 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 BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; *phone:* +44 1292 675207, *fax:* +44 1292 675704; *e-mail: RApublications@baesystems.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4138; *fax:* (816) 329–4090.

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–2011–0230; Directorate Identifier 2011–CE–004–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2011–0016, dated February 1, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products.. The MCAI states:

As a result of fatigue-testing programme on Jetstream aeroplanes, cracks have been found on the main landing gear (MLG) fittings that embody modifications JM5218 or JM8003.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing, possibly resulting in a fuel tank rupture, consequent damage to the aeroplane or injury to the occupants.

Analysis of this failure indicates that an inspection regime has to be implemented in order to ensure the safe operation of the MLG beyond the accumulation of 41,000 Flight Cycles (FC).

For the reasons described above, this AD requires initial and repetitive eddy current inspections, and depending on findings, accomplishment of corrective actions.

The MCAI requires replacing or repairing any cracked MLG fitting found during the initial and repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems has issued British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 190 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $323,000 or $1,700 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing $8,000, for a cost of $8,340 per product. We have no way of determining the number of products that may need these actions.

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:

British Aerospace Regional Aircraft: Docket No. FAA–2011–0230; Directorate Identifier 2011–CE–004–AD.

Comments Due Date

(a) We must receive comments by May 2, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

(1) Equipped with main landing gear (MLG) fittings, part number (P/N) 1379133B1/B2/B3/B4 that incorporate Modifications JM5218 or JM8003; and

(2) certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

As a result of fatigue-testing programme on Jetstream aeroplanes, cracks have been found on the main landing gear (MLG) fittings that embody modifications JM5218 or JM8003.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing, possibly resulting in a fuel tank rupture, consequent damage to the aeroplane or injury to the occupants.

Analysis of this failure indicates that an inspection regime has to be implemented in order to ensure the safe operation of the MLG beyond the accumulation of 41,000 Flight Cycles (FC).

For the reasons described above, this AD requires initial and repetitive eddy current inspections, and depending on findings, accomplishment of corrective actions. The MCAI requires replacing or repairing any cracked MLG fitting found during the initial and repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Upon accumulating 41,000 flight cycles (landings) on the MLG since first installation or within the next 2,000 flight cycles (landings) on the MLG after the effective date of this AD, whichever occurs later, eddy current inspect all the MLG leg pivot beam fastener bores for cracks. Do the inspections following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(2) Before further flight after any inspection required in paragraphs (f)(1), (f)(2)(i), and (f)(2)(ii) of this AD in which cracks are found, replace the MLG fitting or repair any cracks. Cracks are defined in paragraph 2.D.(4) of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010. Replace or repair the MLG fitting following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010. Any time the MLG fitting is repaired or replaced, do the following actions as applicable:

(i) *MLG fitting is replaced with a new MLG fitting as specified in paragraph (f)(2) of this AD:* Upon accumulating 41,000 flight cycles (landings) after replacement, eddy current inspect all the MLG leg pivot beam fastener bores for cracks. Do the inspections following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(ii) *MGL fitting is repaired as specified in paragraph (f)(2) of this AD:* Upon accumulating 27,000 flight cycles (landings) after the last repair and repetitively thereafter at intervals not to exceed 27,000 flight cycles (landings), eddy current inspect all the MLG leg pivot beam fastener bores for cracks. Do the inspections following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(3) If no cracks are found during any inspection required in paragraph (f)(1), (f)(2)(i), or (f)(2)(ii) of this AD, repetitively thereafter upon accumulating 27,000 flight cycles (landings) after the last inspection, eddy current inspect all the MLG leg pivot beam fastener bores for cracks.

(4) As of the effective date of this AD, only install a MLG fitting specified in paragraph (c)(1) of this AD that has been eddy current inspected and found free of cracks following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(5) The compliance times of this AD are presented in flight cycles (landings). If the total flight cycles have not been kept, multiply the total number of airplane hours time-in-service by 0.75. For the purposes of this AD:

(1) 75 cycles equals 100 hours TIS; and

(2) 750 cycles equals 1,000 hours TIS.

Note 1: Credit will be given for the inspection required in paragraph (f)(1) of this

AD and the corrective action required in paragraph (f)(2) of this AD if already done before the effective date of this AD following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, original issue dated April 29, 2009; and BEA Systems All Operator Message: Ref 09–014J–1, issue 1, dated July 31, 2009.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4138; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0016, dated February 1, 2011; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, original issue dated April 29, 2009; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010; and BAE Systems All Operator Message: Ref 09–014J–1, issue 1 dated July 31, 2009, for related information. For service information related to this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; *telephone:* +44 1292 675207, *fax:* +44 1292 675704; e-mail: *RApublications@baesystems.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on March 10, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6097 Filed 3–15–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[EPA–HQ–OW–2010–0492; FRL–9279–6]

RIN 2040–AF23

Proposed Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw Federal aquatic life water quality criteria for chronic and acute copper and nickel, and chronic endrin and selenium applicable to certain waters of the Great Lakes in Wisconsin. Wisconsin's revised and EPA-approved criteria adequately protect all waters of the State designated for aquatic life use at a level consistent with the Federal requirements. Once finalized, the withdrawal will enable Wisconsin to implement its EPA-approved aquatic life criteria.

DATES: Written comments must be received by April 15, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0492, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail to either:* Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Francine Norling, Proposed Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Attention Docket ID No. EPA–HQ–OW–2010–0492.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC 20229 or Francine Norling, Proposed Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Attention Docket ID No. EPA–HQ–OW–2010–0492. 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–OW–2010–0492. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at two Docket Facilities. The Office of Water (OW) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. 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. Publicly available docket materials are also available in hard copy at the U.S. EPA Region 5 address. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (312) 886–0271.

FOR FURTHER INFORMATION CONTACT: Francine Norling, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 (telephone: (312) 886–0271 or e-mail: *norling.francine@epa.gov*) or Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: (202) 566–0446 or e-mail: *fabiano.claudia@epa.gov*).

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

General Information
- What entities may be affected by this action?
- What should I consider as I prepare my comments for EPA?

Background
- What are the applicable Federal statutory and regulatory requirements?
- Why is EPA withdrawing certain Federal aquatic life water quality criteria applicable to Wisconsin?
- Why is EPA not withdrawing Wisconsin's endrin (chronic) aquatic life use criterion for waters designated as warm water sportfish and warm water forage fish use, and selenium (chronic) aquatic life use criterion for waters designated as limited forage fish use?
- What are the applicable Federal aquatic life water quality criteria that EPA is withdrawing?

Statutory and Executive Order Reviews
- Executive Order 12866 (Regulatory Planning and Review)
- Paperwork Reduction Act
- Regulatory Flexibility Act
- Unfunded Mandates Reform Act
- Executive Order 13132 (Federalism)
- Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
- Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
- Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
- National Technology Transfer and Advancement Act
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

General Information

What entities may be affected by this action?

This rule proposes to withdraw Federally promulgated aquatic life criteria for chronic and acute copper and nickel for all waters of the Great Lakes System in the State of Wisconsin designated for aquatic life uses. This rule also proposes to withdraw Federally promulgated chronic aquatic life use criteria for endrin for waters designated by Wisconsin as Cold Water, Limited Forage Fish, and Limited Aquatic Life Use, and withdraw Federally promulgated chronic aquatic life use criteria for selenium for waters designated as Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Aquatic Life use. Entities discharging copper, nickel, endrin or selenium to surface waters of Wisconsin could be affected by this rulemaking given that water quality standards are used to determine water quality based effluent limits in National Pollutant Discharge Elimination System (NPDES) permits, and may affect Clean Water Act (CWA) Section 404 dredge and fill permits, and other Federal licenses and permits requiring CWA 401 certification. Table 1, below, provides examples of the types of NPDES-regulated entities that may ultimately be affected by the Federal rule withdrawal.

TABLE 1—EXAMPLES OF ENTITIES POTENTIALLY AFFECTED BY THE FEDERAL RULE WITHDRAWAL

Category	Examples of potentially affected entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in Wisconsin.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in Wisconsin.

To determine whether your facility may be affected by this proposed withdrawal, examine 40 CFR 132.2, which defines "Great Lakes System" and describes the 40 CFR part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

Background

A. What are the applicable Federal statutory and regulatory requirements?

In 1995, EPA promulgated a final rule known as "Water Quality Guidance for the Great Lakes System" at 40 CFR part 132, hereinafter referred to as the "Guidance," required by CWA Section 118(c)(2) (33.U.S.C 1268). Among other provisions, the Guidance identified minimum water quality standards to protect aquatic life as part of a comprehensive plan to restore the health of the Great Lakes System. Under CWA Section 118(c)(2), Great Lakes States were required to adopt provisions, consistent with the Guidance, into their water quality standards and NPDES permit programs. In the absence of State action, or in the case of an EPA disapproval of the revised State water quality standards, EPA was required to promulgate any necessary requirements pursuant to the Guidance within a two-year period.

As described in the preamble of the Guidance, when a State adopts and EPA approves revised numeric water quality criteria applicable to the Great Lakes System, thereby meeting the requirements of CWA Section 303(c)(2)(B), EPA will publish a notice of approval in the **Federal Register** at 40 CFR 132.5(f)(1). If EPA determines that all or part of the State criteria are inconsistent with the requirements of the CWA or the Guidance, then EPA will provide notice to the State and identify changes necessary for EPA approval (40 CFR 132.5(f)(2)). If the State does not adopt the changes within 90 days of the notification, then EPA publishes a notice identifying the approved and disapproved elements of the submission, then a proposed and subsequent final rule (40 CFR 132.5(f)(2)).

B. Why is EPA withdrawing certain federal aquatic life water quality criteria applicable to Wisconsin?

In 1997, Wisconsin adopted revised water quality standards to comply with the Guidance requirements (40 CFR part 132). In October 2000, EPA disapproved six of Wisconsin's revised aquatic life criteria, including chronic and acute copper and nickel, and chronic endrin and selenium. In January 2008, Wisconsin began rulemaking to revise its water quality standards to address EPA's disapproval of these aquatic life criteria. The Wisconsin Natural Resources Board adopted the State's revised criteria on June 24, 2008 and the Wisconsin Attorney General certified these rules on December 22, 2008. On May 4, 2009, EPA Region 5 received a letter from the Wisconsin Department of Natural Resources requesting approval of final revisions to Chapter NR 105 (Surface Water Quality Criteria and Secondary Values for Toxic Substances) of the Wisconsin Administrative Code (WAC).

Pursuant to CWA Section 303(c)(3), EPA is required to review and approve new and revised State water quality standards before they can become effective for CWA purposes. EPA found that Wisconsin's revised criteria satisfy the Federal requirements for submittal of new or revised water quality standards by a State to EPA and are consistent with the CWA and the Guidance requirements. EPA approved Wisconsin's revised criteria on July 1, 2009, with the exception of the chronic aquatic life criterion for selenium in waters designated by Wisconsin as Limited Forage Fish use.

EPA's approval of Wisconsin's aquatic life criteria makes the Federally promulgated criteria no longer necessary for compliance with the CWA. Therefore, EPA has determined that the Federal aquatic life criteria for chronic and acute copper and nickel, chronic endrin (with the exception of the aquatic life criterion for waters designated as Warm Water Forage Fish and Warm Water Sportfish use), and chronic selenium (with the exception of the aquatic life criterion for waters designated as Limited Forage Fish use) may be withdrawn.

C. Why is EPA not withdrawing Wisconsin's endrin (chronic) aquatic life use criterion for waters designated as warm water sportfish and warm water forage fish use, and selenium (chronic) aquatic life use criterion for waters designated as limited forage fish use?

On July 1, 2009, EPA approved Wisconsin's revised chronic endrin aquatic life use criteria for all waters of the Great Lakes System in the State of Wisconsin designated for aquatic life uses. However, due to a transcription error, the chronic aquatic life use criterion for endrin for waters designated as Warm Water Forage Fish and Warm Water Sportfish use published in Wisconsin's regulations at NR 105.06 (0.05 μg/L) is not identical to the criterion that Wisconsin submitted to EPA and which EPA approved (0.036 μg/L). Therefore, EPA is not proposing to withdraw the Federal chronic endrin criterion for these aquatic life uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

EPA took no action on Wisconsin's revised chronic selenium criterion for Limited Forage Fish waters in its July 1, 2009 action approving the other aquatic life criteria. In summary, Wisconsin calculated the chronic selenium criterion based on water column toxicity studies, rather than through dietary exposure, which currently available data indicates is the appropriate methodology to use. Because Wisconsin does not have an EPA-approved chronic aquatic life selenium criterion for Limited Forage Fish Waters, EPA is not proposing to withdraw the Federal chronic aquatic life selenium criterion as it applies to Wisconsin's Limited Forage Fish waters at this time. Wisconsin may revise their chronic selenium criterion and submit to EPA for review and approval.

D. What are the applicable Federal aquatic life water quality criteria that EPA is withdrawing?

EPA is proposing to withdraw certain Federally promulgated aquatic life criteria for Wisconsin included in the Guidance (40 CFR 132.6). Specifically, EPA is proposing to withdraw the Federal aquatic life use criteria for chronic and acute copper and nickel (40 CFR 132.6(f)) applicable to all waters of the Great Lakes System in Wisconsin designated for aquatic life uses. EPA also is proposing to amend the Federal chronic aquatic life criterion for endrin (40 CFR 132.6(f)) to apply exclusively to waters designated by Wisconsin as Warm Water Sportfish and Warm Water Forage Fish use, and to amend the Federal chronic aquatic life criterion for selenium (40 CFR 132.6(g)) to apply exclusively to waters designated by Wisconsin as Limited Forage Fish use. Once finalize, the rule withdrawal will enable Wisconsin to implement under State law, the EPA-approved aquatic life criteria.

Wisconsin's EPA-approved aquatic life criteria revisions do not affect Wisconsin's designated uses included in Chapter NR 105 of the WAC. Based on the designated uses defined in NR 102.04(3) of the WAC, aquatic life designated uses of Cold Water communities, Warm Water Sportfish communities, and Warm Water Forage Fish communities are consistent with the requirements of CWA Section 101(a)(2) for the protection and propagation of fish, shellfish, and wildlife. The Limited Forage Fish aquatic life use does not meet this requirement because these surface

waters are capable of supporting only a "limited community of forage fish and other aquatic life," based on "limited capacity and naturally poor water quality or habitat" (WAC, Chapter 102.04(3)(d)). The following section discusses and compares the calculations and criteria included in EPA's Federal regulations and those included in Wisconsin's revised criteria.

1. Acute Copper Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and EPA reviewed and approved an acute copper aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin to calculate the acute copper aquatic life criteria results in a slightly higher value than the EPA equation contained in 40 CFR part 132, applicable to all waters within the Great Lakes Basin (*see* Table 2).

TABLE 2—ACUTE COPPER CRITERIA EQUATION

[All surface water classifications]

EPA criteria maximum concentration (µg/L)	Wisconsin acute toxicity criteria (µg/L)
CMC = exp(0.9422*ln(hardness)) − 1.700	ATC = exp(0.9436*ln(hardness)) − 1.6036

The difference between EPA's and Wisconsin's intercept in the copper equation is due to the elimination of one of the most sensitive species from the criteria calculation (northern pikeminnow, genus *Ptychocheilus*) and inclusion of additional data for three species. Eliminating the *Ptychocheilus* data from the equation is scientifically defensible because *Ptychocheilus* is not native to Wisconsin and is not a surrogate for other Wisconsin taxa unrepresented in the data set. The northern pikeminnow is a type of minnow, and other minnows (fathead and bluntnose) found in Wisconsin are well-represented in the copper data set. Wisconsin's slope of 0.9436 is slightly different from EPA's 0.9422 slope due to Wisconsin's inclusion of additional data on three species (*Daphnia magna,* rainbow trout, and bluegill) that were not included in EPA's 1985 slope calculation used in the Guidance. EPA included these data in the 1995 criteria update, but did not recalculate the slope used in the 1985 EPA copper criteria document.

Wisconsin's method for deriving the acute copper criteria equation is an acceptable State-specific modification of EPA's criteria, consistent with Wisconsin's methods for deriving criteria (WAC Chapter NR 105). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

2. Chronic Copper Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin has adopted and EPA reviewed and approved a chronic copper aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin for calculating chronic aquatic life criteria for copper produces a slightly higher value than the EPA equation at a given hardness (*see* Table 3).

TABLE 3—CHRONIC COPPER CRITERIA EQUATION

[All surface water classifications]

EPA Criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L)
CCC = exp(0.8545*ln(hardness)) − 1.702	CTC = exp(0.8557*ln(hardness)) − 1.6036

The difference between EPA's and Wisconsin's copper equation intercept is primarily due to the elimination of one of the most sensitive species from the criteria calculation (northern pikeminnow, genus *Ptychocheilus*), which is not native to Wisconsin. It is scientifically defensible for Wisconsin to eliminate from the calculation data for a non-native species which is not a surrogate for taxon that are unrepresented in the data set. The northern pikeminnow is a type of minnow, and other minnows (fathead and bluntnose) found in Wisconsin, are well-represented in the copper data set. Wisconsin's slope of 0.8557 is slightly different from EPA's 0.8545 slope due to Wisconsin's inclusion of additional data on three species (*Daphnia magna,* rainbow trout, and bluegill) that were not included in EPA's 1985 slope calculation used in the Guidance. EPA included these data in the 1995 criteria update, but did not recalculate the slope used in the 1985 copper criteria document.

Wisconsin's method for deriving the chronic copper criteria equation is an acceptable State-specific modification of EPA's criteria, consistent with Wisconsin's methods for deriving criteria (WAC Chapter NR 105). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

3. Acute Nickel Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and EPA reviewed and approved an acute nickel aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin to calculate acute aquatic life criteria for nickel is identical to that contained in the Great Lakes Water Quality Guidance, 40 CFR part 132 as well as EPA's CWA Section 304(a) national criteria guidance (*see* Table 4). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is

consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

TABLE 4—ACUTE NICKEL CRITERIA EQUATION

[All surface water classifications]

EPA criteria maximum concentration (µg/L)	Wisconsin acute toxicity criteria (µg/L)
CMC = exp(0.846*ln(hardness)) + 2.255	ATC = exp(0.846*ln(hardness)) + 2.255

4. Chronic Nickel Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and EPA approved, two chronic nickel aquatic life criteria equations (*see* Table 5). The first equation is used to calculate the chronic nickel aquatic life criterion for Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish designated uses. The second equation is used to calculate the chronic nickel aquatic life criterion for the Limited Aquatic Life designated use.

TABLE 5—CHRONIC NICKEL CRITERIA EQUATIONS

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water sportfish, warm water forage fish, and limited forage fish	Wisconsin chronic toxicity criteria (µg/L): Limited aquatic life
CCC = exp(0.846*ln(hardness)) + 0.0584	CTC = exp(0.846*ln(hardness)) + .0591	CTC = exp(0.846*ln(hardness)) + .4004

The equation used by Wisconsin for calculating the chronic criteria for Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish designated uses results in a value that is slightly higher than EPA's 304(a) recommendation. This difference is due to Wisconsin's use of a slightly different intercept and the acute-chronic ratio for the *Cladoceran* test data. The equation for the Limited Aquatic Life classification has a different value for the intercept because the fathead minnow data were not included in the calculation. Fathead minnow data were not included because this species is not expected to have a fish community in waters designed as Limited Aquatic Life use.

The regulations at 40 CFR part 132 contain EPA's chronic nickel aquatic life equation, which is applicable to all waters within the Great Lakes Basin. For the Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish water classifications, Wisconsin's equation is scientifically defensible and results in criteria protective of the use and therefore is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132. For the Limited Aquatic Life water classification, the elimination of data for a non-resident species is an appropriate State-specific modification of EPA's equation. Wisconsin's equation is scientifically sound and results in criteria that are protective of the use, therefore Wisconsin's Limited Aquatic Life equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

5. Chronic Endrin Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and EPA reviewed and approved a chronic endrin criterion for Cold Water, Warm Water Forage Fish, and Warm Water Sportfish classifications that is identical to EPA's criterion in the Guidance (40 CFR part 132). The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132 (*see* Table 6). However, due to a transcription error, the chronic aquatic life use endrin criterion for waters designated as Warm Water Forage Fish and Warm Water Sportfish use published in Wisconsin's regulations NR 105.06 (0.05 µg/L) is not identical to the criterion that Wisconsin submitted to EPA and which EPA approved (0.036 µg/L). Therefore, EPA is not withdrawing the Federal chronic endrin criterion for these uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

TABLE 6—CHRONIC ENDRIN AQUATIC LIFE CRITERIA

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water forage fish, and warm water sportfish	Wisconsin chronic toxicity criteria (µg/L): Limited forage fish and limited aquatic life
0.036	0.036	0.050

Wisconsin's criterion for Limited Aquatic Life and Limited Forage Fish waters is higher than EPA's 304(a) recommendation. This is due to the fact that three of the four most sensitive genera used to calculate EPA's criterion do not exist in Limited Aquatic Life and Limited Forage Fish waters in Wisconsin. These species are *Perca* (yellow perch), *Lepomis* (bluegill), and *micropterus* (largemouth bass). Instead, Wisconsin used data for the following

genera for the endrin criterion calculation for Limited Forage Fish Waters: *Pteronarcys* (stonefly), which was also used by EPA; *Cyprinus* (carp); *Piemphales* (fathead minnow); and *Pteronarcella* (stonefly). When the fathead minnow data was removed from the Limited Aquatic Life calculation, the calculated criterion was lower than the calculated criterion for Limited Forage Fish waters. Under Wisconsin's rules NR 105.05(1)(a)(9), when this occurs, the Limited Aquatic Life criterion can be set equal to the Limited Forage Fish criterion if the species used to calculate the Limited Aquatic Life criterion are already included in the database used to calculate the Limited Forage Fish criterion. Therefore, Wisconsin established the Limited Aquatic Life criterion for endrin at a level that provides protection equal to the level for the Limited Forage Fish criterion. Wisconsin's method for deriving the chronic endrin criterion for Limited Aquatic Life and Limited Forage Fish waters is an acceptable State-specific modification of EPA's criterion, consistent with Wisconsin's methods for deriving criteria (Chapter NR 105 of the WAC). The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

6. Chronic Selenium Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted revised chronic aquatic life criteria for selenium as reflected in Table 7. EPA reviewed and approved the revised selenium criteria for Cold Water, Warm Water Sportfish, and Warm Water Forage Fish classifications, which are identical to EPA's selenium criteria in 40 CFR part 132. The criteria are scientifically sound and protective of the uses, therefore they are consistent with CWA Section 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

TABLE 7—CHRONIC SELENIUM AQUATIC LIFE CRITERIA

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water sportfish, warm water forage fish	Wisconsin chronic toxicity criteria (µg/L): Limited forage fish, limited aquatic life
5.0	5.0	46.5

Wisconsin did not adopt EPA's chronic aquatic life criterion for selenium, found in 40 CFR part 132, for Limited Aquatic Life waters. Wisconsin's basis for this decision is that Limited Aquatic Life waters only support an invertebrate community, and EPA's recommended criterion was based on observed effects of selenium on sportfish (bluegills) in field studies (Belews Lake, North Carolina, and others). Instead, Wisconsin calculated a criterion for Limited Aquatic Life waters based on toxicity studies listed in EPA's 1987 selenium aquatic life criteria document (selenite, +4). Wisconsin's value of 46.5 µg/L is slightly different than EPA's calculated criterion of 44.72 µg/L, because Wisconsin removed the data for two saltwater species used in EPA's calculation.

Wisconsin's chronic aquatic life selenium criterion of 46.5 µg/L for Limited Aquatic Life waters is consistent with the protection provided for aquatic life in Limited Aquatic Life waters, for the following reasons:

Two of the three freshwater studies used to calculate the criterion, in accord with the 1985 Guidelines, were conducted on invertebrates (*Daphnia magna* and *Daphnia pulex*). Wisconsin followed their State procedures for deriving aquatic life criteria, using these toxicity studies (Chapter NR 105 of the WAC).

Current literature on selenium states: "The most important aspect of selenium residues in aquatic food chains is not direct toxicity to the organisms themselves, but rather the dietary source of selenium they provide to fish and wildlife species that feed on them".[1] In the case of Limited Aquatic Life waters, there are no fish to feed on the invertebrates, and there is currently no information available to determine effects on wildlife from eating these organisms. No new studies have been conducted with invertebrates that would provide a scientific basis to refute the 1987 invertebrate toxicity studies reported in EPA's 1987 selenium criteria document. Given these reasons, EPA approved Wisconsin's chronic selenium criterion for Limited Aquatic Life waters as an acceptable State-specific modification of EPA's criterion, consistent with Wisconsin's methods for deriving criteria. The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

Wisconsin did not adopt EPA's chronic aquatic life selenium criterion of 5 µg/L, found in 40 CFR part 132, for Limited Forage Fish waters. Wisconsin's basis for not adopting EPA's recommendation is that Limited Forage Fish waters only support forage fish and invertebrates, and EPA's recommended criterion was based on observed effects of selenium on sportfish (blue gill) in field studies. Instead, Wisconsin calculated a chronic selenium criterion for Limited Forage Fish waters based on toxicity studies listed in EPA's 1987 selenium aquatic life criteria document (selenite, +4).

EPA did not use these laboratory toxicity studies as the final basis for the recommended national selenium criterion of 5 µg/L because these studies were based on water column-only exposure to selenium. Given the available data showing the importance of dietary exposure, EPA's criteria recommendations are based on field studies that account for bioaccumulation through the food chain as the main route of the exposure. The available data indicate that the primary route of exposure to all fish species is dietary. Consequently, a water column exposure-based criterion, such as the criterion adopted by Wisconsin for Limited Forage Fish waters, may not protect aquatic life in these waters. Therefore, EPA did not act on Wisconsin's revised chronic selenium criterion for Limited Forage Fish waters in its July 1, 2009 action approving the other aquatic life criteria. Because Wisconsin does not have an EPA-approved chronic aquatic life selenium criterion for Limited Forage Fish Waters, at this time EPA is not proposing to withdraw this Federal chronic aquatic life selenium criterion. Therefore, EPA's Federally promulgated criteria will continue to apply to Wisconsin's Limited Forage Fish waters.

[1] Lemly, 2002. Selenium Assessment in Aquatic Ecosystems: A Guide for Hazard Evaluation. Springer Series on Environmental management. Page 23.

Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action proposes to withdraw Federal requirements applicable to Wisconsin and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing Federal requirements that are no longer needed in Wisconsin. It does not include any information collection, reporting or recordkeeping requirements. However, the OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0049. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA Section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA Section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA Section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA Section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, this rule is not subject to the requirements of UMRA Sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA Section 203.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (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 rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have federalism implications under Executive Order 13132.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, 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 in Executive Order 13175.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This 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 United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) since Wisconsin's criteria apply to all marine waters in the State, EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA's CWA Section 304(a) recommended criteria, that Wisconsin's adopted and EPA-approved criteria are protective of human health and aquatic life.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 7, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 132 is proposed to be amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

Authority: 33 U.S.C. 1251 *et seq.*

Section 132.6 is amended by revising paragraphs (f) and (g) to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

* * * * *

(f) Effective [insert date to be determined in final rule], the chronic aquatic life criterion for endrin in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin, designated as Warm Water Sportfish and Warm Water Forage Fish aquatic life use. Effective [insert date], the criterion for acute and chronic copper and nickel in Tables 1 and 2 of this part may be removed and reserved.

(g) Effective [insert date to be determined in final rule], the chronic aquatic life criterion for selenium in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin, designated by Wisconsin as Limited Forage Fish aquatic life use.

* * * * *

[FR Doc. 2011–5972 Filed 3–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 158, and 174

[EPA–HQ–OPP–2009–0499; FRL–8863–5]

RIN 2070–AJ27

Pesticides; Data Requirements for Plant-Incorporated Protectants (PIPs) and Certain Exemptions for PIPs; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretaries of Agriculture and Health and Human Services a draft proposed rule under sections 21 and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The draft proposed rule will propose codifying data requirements that specifically address the registration data needs of plant-incorporated protectants (PIPs). These data requirements are intended to provide EPA with data and other information necessary for the registration of a PIP or the issuance of an experimental use permit for a PIP. Also, EPA will propose to exempt cisgenic PIPs from registration to encourage research and development of useful biotechnology and reduce the number of PIPs seeking registration. Cisgenic PIPs are formed when genetic material is transferred, using bioengineering technology, between plants that could transfer the genetic material naturally.

DATES: Comments must be received on or before April 15, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0499. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rose Kyprianou, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5354; e-mail address: *kyprianou.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general. It simply announces the submission of a draft proposed rule to the United States Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to those persons who produce or register plant-incorporated protectants (PIPs) under FIFRA or may seek a tolerance or tolerance exemption for a PIP under the Federal Food, Drug, and Cosmetic Act (FFDCA). This action may also be of interest to those persons involved in biotechnology research or development of PIPs. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What action is EPA taking?

Section 25(a)(2) of FIFRA provides that the Administrator must provide the Secretary of Agriculture with a copy of any draft proposed rule at least 60 days before signing it for publication in the **Federal Register**. Similarly, section 21(b) of FIFRA provides that the Administrator must provide the Secretary of Health and Human Services with a copy of any draft proposed rule pertaining to a public health pesticide at least 60 days before signing it for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the Administrator shall include in the proposed rule when published in the **Federal Register** the comments of the Secretary and the Administrator's response to those comments. If neither Secretary comments in writing within 30 days after receiving the draft proposed rule, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

III. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is not a proposed rule, it is merely a notification of submission to the Secretaries of Agriculture and Health and Human Services. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects

40 CFR Part 152

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

40 CFR Part 158

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

40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plant-incorporated protectants, Reporting and recordkeeping requirements.

Dated: March 4, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011–5997 Filed 3–15–11; 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–1147]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On October 5, 2010, FEMA published in the **Federal Register** a proposed rule that included erroneous Base Flood Elevation (BFE) location descriptions for Pollard Creek Tributary No. 5 in Palo Pinto County, Texas. The location description for the proposed BFE of 1,032 feet, referenced to the North American Vertical Datum of 1988, should have located the proposed BFE as being just upstream of Northeast 23rd Street; and the location description for the proposed BFE of 1,049 feet, referenced to the North American Vertical Datum of 1988, should have located the proposed BFE as being approximately 850 feet upstream of Northeast 23rd Street.

DATES: Comments pertaining to the location descriptions for the Pollard Creek Tributary No. 5 BFEs are to be submitted on or before June 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1147, 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.

Correction

In the proposed rule published at 75 FR 61377, in the October 5, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Palo Pinto County, Texas, and Incorporated Areas" addressed the flooding source Pollard Creek Tributary No. 5.

The proposed rule listed the location description for the proposed BFE of 1,032 feet, referenced to the North American Vertical Datum of 1988, as being approximately 850 feet upstream of 23rd Street. The correct location of this proposed BFE is just upstream of Northeast 23rd Street. The proposed rule also listed the location description for the proposed BFE of 1,049 feet, referenced to the North American Vertical Datum of 1988, as being just upstream of 23rd Street Northeast. The correct location of this proposed BFE is approximately 850 feet upstream of 23rd Street.

This proposed rule correction is reopening the comment period for Pollard Creek Tributary No. 5, for the locations of the proposed BFEs of 1,032 feet and 1,049 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 61377.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–6059 Filed 3–15–11; 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–1110]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On April 14, 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 19320. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Sumter County, Alabama, and Incorporated Areas. Specifically, it addresses the following flooding sources: Factory Creek (backwater effects from Tombigbee River), Fenache Creek (backwater effects from Tombigbee River), Folsum Branch (backwater effects from Tombigbee River), High Run (backwater effects from Tombigbee River), Jones Creek (backwater effects from Tombigbee River), Noxubee River (backwater effects from Tombigbee River), Sandy Creek, Sucarnoochee River, Tombigbee River, Tombigbee River Tributary 13 (backwater effects from Tombigbee River), Tombigbee River Tributary 16 (backwater effects from Tombigbee River, Tombigbee River Tributary 7 (backwater effects from Tombigbee River), Tombigbee River Tributary 8 (backwater effects from Tombigbee River), Toomsuba Creek, and Whiterock Creek (backwater effects from Sucarnoochee River).

DATES: Comments are to be submitted on or before June 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1110, 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.

Corrections

In the proposed rule published at 75 FR 19321, in the April 14, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Sumter County, Alabama, and Incorporated Areas" addressed the following flooding sources: Factory Creek (Backwater effects from Tombigbee River), Fenache Creek (Backwater effects from Tombigbee River), Folsum Branch (Backwater effects from Tombigbee River), High Run (Backwater effects from Tombigbee River), Jones Creek (Backwater effects from Tombigbee River), Noxubee River (Backwater effects from Tombigbee River), Sandy Creek, Sucarnoochee River, Tombigbee River, Tombigbee River Trib 13 (Backwater effects from Tombigbee River), Tombigbee River Trib 16 (Backwater effects from Tombigbee River, Tombigbee River Trib 7 (Backwater effects from Tombigbee River), Tombigbee River Trib 8 (Backwater effects from Tombigbee River), Toomsuba Creek, and Whiterock Creek (Backwater effects from Sucarnoochee River). 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	
Sumter County, Alabama, and Incorporated Areas				
Factory Creek (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 1,600 feet upstream of County Road 21.	None	+115	Unincorporated Areas of Sumter County.
Fenache Creek (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 0.5 mile downstream of County Road 4.	None	+126	Unincorporated Areas of Sumter County.
Folsum Branch (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 500 feet upstream of Fulson Branch Road.	None	+120	Town of Gainesville.
High Run (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 2.3 miles upstream of the confluence with the Tombigbee River.	None	+103	Unincorporated Areas of Sumter County.
Jones Creek (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 2,100 feet upstream of County Road 20.	None	+114	Town of Epes.
Noxubee River (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 7.3 miles upstream of County Road 85.	None	+122	Unincorporated Areas of Sumter County.
Sandy Creek	Approximately 1 mile downstream of State Route 28.	None	+115	Unincorporated Areas of Sumter County.
	Approximately 1,673 feet downstream of East Park Road.	None	+117	
Sucarnoochee River	Approximately 1.6 miles downstream of railroad.	None	+115	Unincorporated Areas of Sumter County.
	Approximately 1.4 miles upstream of U.S. Route 11.	None	+120	
Tombigbee River	Approximately 29.4 miles downstream of U.S. Route 11.	None	+95	Town of Epes.
	Approximately 12.7 miles upstream of the Gainesville Dam.	None	+130	
Tombigbee River Tributary 13 (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 585 feet downstream of Port of Unnamed Road.	None	+108	Unincorporated Areas of Sumter County.
Tombigbee River Tributary 16 (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 740 feet downstream of Port of Epes Highway.	None	+113	Unincorporated Areas of Sumter County.
Tombigbee River Tributary 7 (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 1.2 miles downstream of Pine Top Road.	None	+96	Unincorporated Areas of Sumter County.
Tombigbee River Tributary 8 (backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 0.6 mile upstream of Trails End Road.	None	+101	Unincorporated Areas of Sumter County.
Toomsuba Creek	Approximately 0.7 mile downstream of the railroad.	None	+148	Unincorporated Areas of Sumter County.
	Approximately 750 feet upstream of U.S. Route 11.	None	+164	
Whiterock Creek (backwater effects from Sucarnoochee River).	From the confluence with the Sucarnoochee River to approximately 1,073 feet downstream of Arrington Street.	None	+116	Unincorporated Areas of Sumter County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

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	

** 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

Town of Epes

Maps are available for inspection at 40 Carrol Street, Epes, AL 35464.

Town of Gainesville

Maps are available for inspection at 9380 State Street, Gainesville, AL 35464.

Unincorporated Areas of Sumter County

Maps are available for inspection at 318 Washington Street, Livingston, AL 35470.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–6060 Filed 3–15–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–52; FCC 11–28]

Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Second Further Notice of Proposed Rulemaking (SFNPRM), in which it announced that it wished to develop a more comprehensive record regarding measures to assist Federally recognized Native American Tribes and Alaska Native Villages (Tribes) in obtaining commercial FM radio station authorizations. Specifically, the Commission sought comment on the use of threshold qualifications for Tribes applying for commercial FM radio channel allotments that were added to the Table of Allotments using the Tribal Priority adopted by the Commission in the First Report and Order (First R&O) in this proceeding. The Commission also sought further comment on whether a Tribal Bidding Credit would accomplish the goal of increasing Tribal ownership of commercial stations broadcasting to Tribal Lands, and sought comment on the financial and other barriers facing Tribes wishing to enter the commercial broadcast arena.

DATES: Comments may be filed on or before April 15, 2011 and reply comments may be filed on or before May 16, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 16, 2011.

ADDRESSES: You may submit comments, identified by MB Docket No. 09–52, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov.* Include the docket number in the subject line of the message. *See* the **SUPPLEMENTARY INFORMATION** section of this document for detailed information on how to submit comments by e-mail.
- *Mail:* 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: Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418–2700.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking, FCC 11–28, adopted March 3, 2011, and released March 3, 2011.

Initial Paperwork Reduction Act of 1995 Analysis

The SFNPRM contains potential information collection requirements subject to the PRA, Public Law 104–13. OMB, the general public, and other Federal agencies are invited to comment on the potential new and modified information collection requirements contained in this SFNPRM. If the information collection requirements are adopted, the Commission will submit the appropriate documents to OMB for review under section 3507(d) of the PRA and OMB, the general public, and other Federal agencies will again be invited to comment on the new and modified information collection requirements adopted by the Commission.

Public and agency comments on the potential proposed information collection requirements are due May 16, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; 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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov,* and to Nicholas A. Fraser, Office of Management and Budget (OMB), via the Internet to *Nicholas_A._Fraser@omb.eop.gov* or by fax to 202–395–5167.

Summary of Second Further Notice of Proposed Rule Making

Recognizing "the risks inherent in applying a section 307(b) preference at the allotment stage for auctionable non-reserved band spectrum," (First R&O, 75 FR 9797, Mar. 4, 2010, FCC 10–24, rel. Feb. 23, 2010), the Commission sought comment in the Further Notice of Proposed Rule Making, 75 FR 9856, March 4, 2010, FCC 10–24, rel. Feb. 23, 2010 (FNPRM), in this proceeding on whether to establish an auction bidding credit for Tribes seeking to provide commercial FM radio service to their Tribal Lands and members. The Tribal bidding credit was originally proposed to mitigate concerns that, due to the two-step nature of the commercial FM licensing process, Tribes or Tribal entities that employ the Tribal Priority to obtain FM allotments might be outbid by competing, non-Tribal applicants. The only (joint) commenters to address this issue proposed a 35 percent bidding credit that would be available to Tribes or Tribal entities that participated in the allotment proceeding for the FM channel being auctioned, regardless of new entrant status. Under this proposal, a Tribe or Tribal entity without a Commission license also would be entitled to an additional 25 percent new entrant bidding credit, for a total maximum bidding credit of 60 percent.

The present record is inconclusive as to the ultimate effectiveness of Tribal bidding credits. Notwithstanding the useful input received, the Commission was unclear as to whether and how it could craft such credits so as to meaningfully advance its goals consistent with the competitive bidding mandate of 47 U.S.C. 309(j). In this regard, there is a necessary balance between Congress's directive to design competitive bidding systems to recover for the public a portion of the value of spectrum (*see* 47 U.S.C. 309(j)(3)(C)), which militates in favor of setting the credit as low as possible, and the need to ensure that Tribes and Tribal entities uniquely qualified to serve their communities receive licenses to do so, which militates in the other direction. Most Tribal applicants likely will qualify for new entrant bidding credits of up to 35 percent under the Commission's current rules (given the small number of Tribal-owned stations), and the record did not reflect whether and, if so, how much more of an additional credit would be necessary to address the particular bidding disadvantages that Tribes face. To the extent that such disadvantages are substantial, the Commission was concerned that even a 60 percent credit might not be sufficient to ensure realization of its policy goals in establishing the Tribal Priority.

On further consideration, the Commission believed an alternative approach might be more effective to achieve its policy goals and would be more consistent with its statutory mandate to license spectrum in the public interest. The Commission thus sought comment on whether to require, as a threshold qualification to apply for a commercial FM channel allotted pursuant to the Tribal Priority, that applicants qualify for a Tribal Priority for the channel. This proposed requirement would be similar to procedures used for certain vacant FM allotments reserved for noncommercial educational (NCE) use. Under those procedures, which are intended to safeguard the policy objectives of the channel reservation process (namely, to add new NCE stations where listeners receive limited or no NCE service), applicants for a reserved channel must make a showing at the application stage similar to that required of channel reservation proponents at the allotment stage. Likewise, under the proposed approach here, a Tribe or Tribal entity applying for an FM channel allotted based on the Tribal Priority would be required to establish at the application stage its qualifications to provide the service for which the channel was specifically allotted.

The Commission believes the proposed threshold qualifications would be more effective than Tribal bidding credits in advancing the Tribal Priority's goals. As set forth in the First R&O, the Priority is premised on the unique ability of Tribes and Tribal entities to serve their Tribal communities "[b]ecause of their status as sovereign nations responsible for, among other things, 'maintaining and sustaining their sacred histories, languages, and traditions.' " (First R&O, 25 FCC Rcd at 1587–88). As the Commission previously noted, the identity of the service provider to Tribal areas is critical to Tribal Priority-based allocations. Whereas in AM and NCE radio services the Tribal Priority generally operates as a dispositive preference in the application process, guaranteeing that a qualified applicant will obtain the license, commercial FM licensing is a two-step process in which a dispositive preference at the initial, allotment stage does not guarantee the grant of a license in the second, application step. An unavoidable consequence of the auctions process is that Tribes and Tribal entities uniquely qualified to serve their communities may be outbid in the commercial FM application process by non-Tribal applicants that file mutually exclusive applications. At best, Tribal bidding credits can mitigate this concern by boosting the competitive position of Tribal applicants. They cannot, however, eliminate the risk of qualified Tribal applicants being outbid, thereby frustrating the Commission's goals in allocating the channel pursuant to the Tribal Priority. In contrast, the proposed threshold qualification requirement would ensure that only a Tribe or Tribal entity qualified to provide the unique service contemplated by the allocation is eligible for the license to provide that service. Such an approach would set the commercial FM service on the same footing as other radio services with regard to the Tribal Priority, and avoid undermining the Commission's policy goals in establishing the Tribal Priority.

The Commission further believes the proposed threshold qualifications would be consistent with its statutory mandate under 47 U.S.C. 309(j)(6)(E), which provides, in pertinent part, that "[n]othing in this subsection, or in the use of competitive bidding, shall * * * be construed to relieve the Commission of the obligation in the public interest to continue to use * * * threshold qualifications * * * in order to avoid mutual exclusivity in application and

licensing proceedings." The Commission believes the use of threshold qualifications would serve the public interest because the premise of the Tribal Priority is a Tribe's or Tribal entity's unique ability to serve the needs and interests of its local community. That premise distinguishes the proposal here from the grant of bidding credits to an FM applicant who successfully petitions for the allotment of a channel being auctioned, a proposal that the Commission rejected in 1998 as analogous to the pioneer preferences that Congress has specifically eliminated. The threshold qualification would be based on the Tribe's or Tribal entity's ability to fulfill the purpose for which the channel was allotted under the Tribal Priority, rather than on its participation in the allotment proceeding. Thus, eligible Tribes or Tribal entities may be eligible to apply for a channel allotted pursuant to the Tribal Priority even if they did not petition for the allotment. To the extent that mutually exclusive applications may still be filed under the proposed threshold qualifications approach, thus requiring competitive bidding, the bidders would be limited to qualified Tribes and Tribal entities, so the Commission's policy goals would not be frustrated. The Commission also asked whether to adopt an exception to the general prohibition of collusion set forth in 47 CFR 1.2105(c) applicable to mutually exclusive applications in the commercial FM broadcast service, so that Tribes or Tribal entities that file mutually exclusive applications for a channel allotted pursuant to the Tribal Priority have an opportunity to resolve any mutual exclusivities through engineering solutions or settlement.

The Commission seeks comment on the foregoing threshold qualifications proposal, the issues related to it that are discussed above, and on any and all additional issues that commenters believe it may raise. In particular, the Commission invites comment from the Tribal community on its potential utility in ensuring realization of the goals underlying the Tribal Priority. In the event no applicant meets the threshold qualifications for the Tribal allotment in a filing window, the Commission seeks comment on whether it should routinely include such allotments in subsequent windows. The Commission also seeks comment on when it should permit non-Tribal applicants to seek construction permits through the auctions process for allotments for which potential Tribal applicants have not expressed an interest. The Commission also invites further comment on Tribal bidding credits, on which issue it found the record to be inconclusive. The Commission welcomes additional input from commenters addressing the record deficiencies on this issue, such as evidence as to the particular bidding disadvantages that Tribes may face vis-à-vis non-Tribal bidders for broadcast radio licenses, as well as the capital requirements of Tribes and Tribal-owned entities to provide commercial FM service to Tribal lands. The Commission strongly encourages qualified Tribes and Tribal entities to take advantage of the Tribal Priority by filing rulemaking petitions for commercial FM allotments. With regard to the commercial FM service, the goals of the Tribal Priority can be realized only through the filing of such petitions. Finally, the Commission seeks comment on ways that it could promote a commercial Tribal radio service, including comment on potential barriers that may discourage Tribal participation in the auctions and licensing processes.

Comments and Reply Comments

Pursuant to 47 CFR 1.415 and 1.419, interested parties must file comments on or before April 15, 2011, and must file reply comments on or before May 16, 2011. 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.

Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cbg/ecfs,* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web sites 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 for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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 (although the Commission continues 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 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, *etc.*) by e-mail at *FCC504@fcc.gov,* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

The full text of the Further Notice of Proposed Rulemaking 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 copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–09–30.pdf.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

***Ex Parte* Rules**

This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules (47 CFR 1.1206(b)). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a

presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

As required by the RFA (5 U.S.C. 603), 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 the SFNPRM. 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 SFNPRM provided in paragraph 71 of the SFNPRM. The Commission will send a copy of this entire SFNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the SFNPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

This further rulemaking proceeding is initiated to obtain further comments concerning an alternate proposal to assist Tribes seeking to establish new commercial FM service to Tribal communities. In the FNPRM, the Commission proposed an auction bidding credit to Tribes and entities owned by Tribes. The Commission received only one proposal for a potential Tribal bidding credit: To grant Tribes a 35 percent Tribal Bidding Credit (TBC), to be added to any new entrant bidding credit for which they may qualify, to a maximum of 60 percent. The Commission believes this record is inconclusive to adopt a TBC, and believes it is unclear whether and how a TBC could be crafted to advance the dual goals of increasing Tribal ownership of radio facilities and maximizing the value of spectrum through competitive bidding, as mandated by 47 U.S.C. 309(j). On further consideration, the Commission determined that an alternative approach would more effectively achieve the policy goals underlying the Tribal Priority adopted in the First R&O in this proceeding, and be more consistent with its statutory mandate (*see* 47 U.S.C. 309(j)(6)(e)).

Specifically, the Commission seeks comment on whether to require, as a threshold qualification to apply for a commercial FM channel allotted pursuant to the Tribal Priority, that applicants qualify for a Tribal Priority for that channel. Such an approach is consistent with other procedures used by the Commission, such as those used to reserve vacant FM allotments for noncommercial educational (NCE) use. Additionally, while the Tribal Priority operates as a dispositive preference in the AM commercial and FM NCE application contexts, as currently formulated the priority is not dispositive for FM commercial stations, because a Tribe that adds an FM allotment using the Tribal Priority may still be outbid at auction by a non-Tribal applicant. The alternative approach proposed by the Commission would correct this asymmetry, and would also more effectively ensure that FM allotments added using the Tribal Priority are ultimately licensed to Tribes, who would use such FM channels for their intended purposes of promoting Tribal language, culture, and self-government. The Commission therefore seeks comment on this alternative approach and its potential ramifications, including whether non-Tribal applicants should be allowed to apply for FM allotments added using the Tribal Priority, but for which no Tribe expresses interest. The Commission also seeks additional input from commenters on the TBC, and on other ways in which the Commission could promote commercial Tribal radio service, including comment on potential barriers that may discourage Tribal participation in the broadcast auction and licensing processes.

Legal Basis

The authority for this proposed rulemaking is contained in Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j).

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

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small Business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Radio Stations

The proposed rules and policies potentially will apply to all AM and FM radio broadcasting applicants, and proponents for new FM allotments, who qualify for the Tribal Priority adopted in the First R&O in this proceeding. The "Radio Stations" Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts. According to BIA Advisory Services, L.L.C., MEDIA Access Pro Database on January 20, 2011, 10,820 (97%) of 11,127 commercial radio stations have revenue of $7 million or less. Therefore, the majority of such entities are small entities. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule and procedural changes may, in some cases, impose different reporting requirements on

potential radio licensees and permittees, insofar as they would require or allow certain applicants to demonstrate their qualifications to apply for an FM channel allotted using the Tribal Priority. However, the information to be filed is already familiar to broadcasters, and the information requested to claim the Tribal Priority is similar to current section 307(b) showings, so any additional burdens would be minimal.

To the extent that other applicants would be disadvantaged by Tribes qualifying for the Tribal Priority and the proposed alternative "threshold qualifications" approach, the Commission believes that such burdens would be offset by the fact that the Tribal Priority is designed to redress inequities in the number of Tribal radio licensees, compared to the population of Tribal citizens in the United States and the fact that some of these citizens were deprived of their original Tribal lands. The Tribal Priority, then, not only helps the Commission to meet its goals of ownership and program diversity, but also furthers the Federal government's obligations toward Tribes to assist them in promulgating Tribal languages and cultures, and to support Tribal self-government. The approach proposed by the Commission would also apply only to FM allotments added to the Table of Allotments using the Tribal Priority, and thus would apply only to proposed facilities serving primarily Tribal communities. Adoption of the threshold qualifications approach would thus assist Tribes in pursuing commercial radio licensing opportunities and would enable ownership of facilities added to the FM Table of Allotments by Tribes or Tribal-owned entities that are charged with promoting Tribal self-governance.

Steps Taken To Minimize Significant 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 or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities (5 U.S.C. 603(b)).

In the SFNPRM, the Commission seeks to provide additional opportunities for participation by Tribes seeking commercial radio facilities, especially FM commercial stations. The Commission seeks comment as to whether its goals could be more effectively accomplished through the use of a "threshold qualifications" approach, limiting applications for Tribal-priority-added FM allotments to those filed by Tribes or Tribal-owned entities. The Commission is open to consideration of alternatives to the proposals under consideration, as set forth herein, including but not limited to alternatives that will minimize the burden on broadcasters, most of whom are small businesses. There may be unique circumstances these entities may face, and we will consider appropriate action for small broadcasters when preparing a Third Report and Order in this matter.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

None.

This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may request them by e-mail at *FCC504@fcc.gov,* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Ordering Clause

Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j), that this Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making *is adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–6146 Filed 3–15–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 391

[Docket No. FMCSA–2008–0363]

RIN 2126–AA97

National Registry of Certified Medical Examiners

AGENCY: Federal Motor Carrier Safety Administration, Transportation.

ACTION: Request for public comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Motor Carrier Safety Administration (FMCSA) is making available for public comment a modification of the proposed information collection request (ICR) related to the notice of proposed rulemaking (NPRM) for the National Registry of Certified Medical Examiners (NRCME) published on December 1, 2008. In the comments on the NPRM, a commenter inquired as to what a motor carrier had to do to verify that a medical examiner's certificate had been issued to a commercial motor vehicle driver by a medical examiner listed on the proposed NRCME. In response to this and other comments, FMCSA is considering whether to require employers to verify that the medical examiner is listed and to place a record of such verification in the driver qualification file. This document is to inform the public that a modified ICR that includes this verification requirement under consideration is available for public comment. The other information collection requirements were made available for public comments at the same time as the NPRM. Therefore, comments will only be considered in response to this document with respect to the information collection aspects of the verification requirements under consideration by the Agency. Comments on the other information collection requirements proposed with the NPRM will not be considered.

DATES: Comments and related material must be submitted on or before May 16, 2011.

ADDRESSES: You may submit comments identified by docket number FMCSA–2008–0363 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

below for instructions on submitting comments.

Comments must also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for the Department of Transportation.

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Physical Qualifications Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001. Telephone: (202) 366–4001. E-mail: *fmcsamedical@dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Administration (FMCSA) is making available for public comment a modification of the proposed information collection request (ICR) related to the notice of proposed rulemaking (NPRM) for the National Registry of Certified Medical Examiners (NRCME) published on December 1, 2008 (73 FR 73129). Other information collection requirements were made available for public comments in the same issue as the NPRM (*see* 73 FR at 73140–42).

Public Participation and Request for Comments: We encourage you to submit comments on the modification to the Information Collection Request related to the proposed NRCME. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

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

Title: National Registry of Certified Medical Examiners (NRCME).

Summary: The Secretary of Transportation is required to establish and maintain a national registry of medical examiners that are qualified to perform examinations and issue medical certificates that verify whether a CMV driver's physical qualifications meet FMCSA standards. In addition, medical examinations of CMV operators will be performed by MEs who have received training in physical and medical examination standards, and, after the NRCME is established, are listed on the NRCME. 49 U.S.C. 31136(a)(3) and 31149. Once the NRCME Program is implemented, FMCSA will accept medical examinations performed only by certified MEs listed on the NRCME, as required by law.

Several new proposed information collection requirements related to the proposed NRCME were described in the Notice of Proposed Rulemaking published on December 1, 2008. In each case, the relationship of the proposed information collection to the proposals in the NPRM was explained, and an estimate of the information collection burden was provided. An opportunity to provide public comment on those requirements and the estimated burden, as required by the Paperwork Reduction Act, was made available at that time. FMCSA, in response to comments on the proposed rule, is considering whether to include an additional information collection requirement that would be a substantial modification of the information collection requirements involved. The provision under consideration would require employers of CMV drivers to verify the National Registry Number of the ME for each driver required to be examined by an ME on the National Registry, and place a note relating to verification in the driver qualification file. This information collection requirement provides proof the employer has met its obligation to require drivers to comply with the regulations that apply to the driver (49 U.S.C. 31135[a] and 49 CFR 390.11).

Respondents (Including the Number of): The likely respondents to this proposed information requirement are the 1,193,083 employers of the 7,000,000 CMV drivers required to obtain medical certificates. In any given year, FMCSA estimates that approximately 4,600,00 CMV drivers will respond and provide their certificates to their employers.

Frequency: FMCSA estimates that approximately 4,622,925 verifications and recordkeeping actions will be performed by employers each year.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

We estimate it will take motor carrier administrative personnel 4 minutes to verify the National Registry Number, write a note regarding the verification, and file the note in the driver qualification file, so this will require approximately 308,195 hours of administrative personnel time on a yearly basis (4,622,925 verifications × 4 minutes/60 minutes per verification = 308,195 hours).

The total estimated annual recordkeeping and time burden for all information collections related to the physical qualification requirements is approximately 2,092,243 hours.

Any comments submitted in response to this notice will be summarized in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 8, 2011.

Kelly Leone,

Associate Administrator and Chief Information Officer, Research and Information Technology, Director, Information Technology and Deputy CIO, FMCSA.

[FR Doc. 2011–5885 Filed 3–15–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AY93

Fisheries in the Western Pacific; Mechanism for Specifying Annual Catch Limits and Accountability Measures

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

ACTION: Notice of availability of fishery ecosystem plan amendments; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend its five fishery ecosystem plans (FEPs) to establish a mechanism for specifying annual catch limits (ACLs) and accountability measures (AMs), adopt the ecosystem component species classification described in the NMFS advisory guidelines for National Standard 1, and identify management unit species that have statutory exceptions to the ACL and AM requirements. The intent of the amendment is end and prevent overfishing, rebuild overfished stocks, and achieve optimum yield.

DATES: Comments on the amendment must be received by May 16, 2011.

ADDRESSES: Comments on the amendment, identified by 0648–AX93, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;* or

• *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily 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 or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the amendment (Amendment 2 to the American Samoa FEP, Amendment 3 to the Hawaii FEP, Amendment 2 to the Mariana Archipelago FEP, Amendment 1 to the Pacific Remote Islands Areas FEP, and Amendment 4 to the western Pacific Pelagic fisheries FEP are identical), including an environmental assessment and background information on the action, are available from *http://www.regulations.gov* and from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: In 2006, the Magnuson-Stevens Fishery Conservation and Management Act was amended to include new provisions that facilitate preventing and ending overfishing, and rebuilding overfished stocks. Specifically, each council's fishery management plan must include a mechanism for specifying ACLs so that overfishing does not occur. AMs are also required to prevent ACLs from being exceeded, and to correct or mitigate any overages of the ACL. The ACL and AM mechanism would be applied to all fisheries, except species that are subject to an international fishery agreement in which the U.S. participates, or have a life cycle of approximately one year or less. The National Standard 1 guidelines, published by NMFS on January 16, 2009 (74 FR 3178), provides guidance for establishing ACLs and AMs, and exceptions to the requirements.

This amendment would establish a mechanism for specifying ACLs and AMs in each of the five western Pacific FEPs. They would include a tier of control rules which the Council's Scientific and Statistical Committee would apply to determine an acceptable biological catch limit. These control rules would account for scientific uncertainty in the estimate of a fishery's overfishing limit, and the probability of overfishing. The mechanism would also include qualitative methods for determining the probability of overfishing and for setting ACLs, and describe a suite of AMs to prevent ACLs from being exceeded or to mitigate overages of an ACL, including use of annual catch targets.

This amendment would also identify species that have statutory exceptions to the ACL and AM requirements; at present, these are all western Pacific pelagic management unit species. Finally, the amendment incorporates existing status determination criteria, as described in the five western Pacific FEPs. The Council would continue to use the SDC in determining the overfishing and overfished status of western Pacific fisheries, whereby exceeding the maximum fishing mortality threshold for a period of one year or more constitutes overfishing, and a stock is considered overfished if its biomass falls below the minimum stock size threshold. The amendment also describes the Council's intent to use the "ecosystem component" classification defined in the National Standard 1 guidelines. Specifying ecosystem component species is not part of this amendment; it would be done in future amendments to the appropriate FEP(s).

Public comments on the proposed amendment must be received by May 16, 2011 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. NMFS soon expects to publish and request public comment on a proposed rule that would implement the ACL mechanism.

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

Dated: March 11, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–6151 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 10, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Public Health Inspection System.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U. S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS is developing a new Web-based system that will improve FSIS inspection operations and facilitate industry members' application for inspection, export, and import of meat, poultry, and egg products. When the Agency implements the Public Health Information System (PHIS), industry members will use current and new FSIS forms in PHIS. Industry will be able to submit some of these forms through a series of on-line screens in PHIS; other forms will be available in PHIS only as electronic forms. Paper forms will also be available to firms that do not wish to use PHIS. To submit information through PHIS, firms' employees will need to register for a USDA eAuthentication account with Level 2 access.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2,447.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 176,467.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–6041 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 10, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Summary of Collection: The Rural Utilities Service (RUS) was established in 1994 by the Federal Crop Insurance

Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 stat. 3178, 7 U.S.C. 6941 *et seq.*) as successor to the Rural Electrification Administration (REA) with respect to certain programs, including the electric loan and loan guarantee program authorized under the Rural Electrification Act (RE Act) of 1936. The RE Act authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets and/or revenue. RUS will collect information including studies and reports to support borrower loan applications.

Need and Use of the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification and evaluate the success of RUS program activities. Without the information RUS would be unable to accomplish statutory goals.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 650.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 66,695.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–6042 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Information Collection; Representation for CCC and FSA Loans Authorization To File a Financing Statement

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension of a currently approved information collection associated with form CCC–10, entitled "Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization To File A Financing Statement and Related document," which is used to support the CCC and FSA Farm Loan Programs (FLPs).

DATES: We will consider comments that we receive by May 16, 2011.

FOR FURTHER INFORMATION CONTACT: DeAnn Allen, USDA, Farm Service Agency, Price Support Division, phone (202) 720–9889.

ADDRESSES: 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:

E-mail: Send comments to: *Deann.Allen@wdc.usda.gov.*

Fax: (202) 690–3307.

Mail: DeAnn Allen, Program Manager, USDA, Farm Service Agency, Price Support Division, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512.

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.

SUPPLEMENTARY INFORMATION:

Title: Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization To File a Financing Statement and Related Documents.

OMB Control Number: 0560–0215.

Expiration Date of Approval: October 31, 2011.

Type of Request: Extension.

Abstract: Form CCC–10 is necessary to: (a) Gather or verify basic data provided by a CCC or FSA loan applicant that is required on a financing statement filed by CCC or FSA to perfect a security interest in collateral used to secure a loan; and (b) obtain loan applicant permission to file a financing statement prior to the execution of a security agreement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Estimated Number of Respondents: 55,500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 55,500.

Estimated Total Annual Burden Hours: 32,357 hours.

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 comments received in response to this notice, including names and addresses when provided, will be a mater of public records. Comments will be summarized and included in the request for OMB approval of the information collection.

Signed in Washington, DC, on March 9, 2011.

Val Dolcini,

Executive Vice President, Commodity Credit Corporation, Administrator, Farm Service Agency.

[FR Doc. 2011–6150 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Transfer of Farm Records Between Counties

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 interested individuals and organizations on an extension with a revision of a currently approved information collection associated with transferring of farm records from one administrative county office to another.

DATES: We will consider comments that we receive by May 16, 2011.

ADDRESSES: 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:

E-mail: Send comments to: *rick.blackwood@wdc.usda.gov.*

Fax: 202–720–4941.

Mail: Rick Blackwood, Agricultural Program Specialist, Common Provisions Branch, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512.

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: Rick Blackwood, Agricultural Program Specialist, (202) 720–5422.

SUPPLEMENTARY INFORMATION:

Title: Transfer of Farm Records Between Counties.

OMB Control Number: 0560–0253.

Type of Request: Extension with a revision.

Abstract: Farm owners or operators may elect to transfer farm records between FSA county offices when the principal dwelling of the farm operator has changed, a change has occurred in the operation of the land, or there has been a change that would cause the receiving administrative county office to be more accessible such the construction of a new highway, relocation of the county office building site, *etc.* The transfer of farm records is also required when an FSA county office closes. The FSA County Committees from both the transferring and receiving counties must approve or disapprove all proposed farm record transfers. In some cases, the State Committee and/or the National Office must also approve or disapprove proposed farm record transfers.

Estimated Average Time to Respond: Public reporting burden for collection of this information is estimated to average 10 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Type of Respondents: Owners and operators.

Estimate of Burden: Average 10 minutes per response.

Estimated Number of Respondents: 23,000.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Number of Responses: 23,000.

Estimated Total Annual Burden on Respondents: 26,833 hours.

We are requesting comments on all aspects of this information and to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information from those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget Approval.

Signed at Washington, DC, on March 9, 2011.

Signed by Val Dolcini,

Administrator, Farm Service Agency.

[FR Doc. 2011–6149 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Farmers' Market Nutrition Program (FMNP) Forms and Regulations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of FNS to request revisions to currently approved information collections in the WIC Farmers' Market Nutrition Program Financial Report (Form FNS–683); WIC Farmers' Market Nutrition Program Recipient Report (Form FNS–203); and WIC Farmers' Market Nutrition Program Regulations.

DATES: Written comments must be received by May 16, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FNS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Anne Bartholomew, Chief, Policy Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

In all cases, please label your comments as "Proposed Collection of Information: WIC Farmers' Market Nutrition Program."

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m., to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection forms and instructions should be directed to: Anne Bartholomew at *Anne.Bartholome@fns.usda.gov* or (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: The WIC Farmers' Market Nutrition Program (FMNP) Forms and Regulations.

OMB Number: 0584–0447.

Form Numbers: Form FNS–683 and FNS–203.

Expiration Date: July 31, 2011.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: Section 17(m)(8) of the Child Nutrition Act of 1966, 42 U.S.C. section 1786(m)(8), and the WIC Farmers' Market Nutrition Program (FMNP) regulations at 7 CFR 248 require that certain Program-related information and financial data be compiled and submitted to FNS and that full and complete records concerning the FMNP operations are maintained. Each State agency administering the FMNP is required to use FNS–683 and FNS–203 to report financial and participation data. The information gathered is used for funding and program management

decisions. The currently approved reporting and recordkeeping requirements for the FMNP are based on 46 State agencies administering the program.

The most recent annual report shows that 45 State agencies administer the program, including the authorization of 3,635 farmers' markets, 17,543 farmers, and 2,662 roadside stands authorized to accept FMNP coupons (for a total of 23,840 authorized entities). However, FNS estimates that one third of authorized farmers or farmer's markets complete an agreement every year, thereby estimating the number of agreements submitted per year at 7,947. This represents an increase in the number of authorized entities from the currently approved reporting and recordkeeping requirements for the FMNP. Therefore FNS is requesting a revision to this information collection burden due to an increase in the number of authorized entities submitting farmer's market agreements and authorizations. The total burden is being increased from 20,221 to 23,917 hours.

Affected Public: 45 State Agencies; 7,947 Farmers (Farmers' Market and Roadside Stand).

Estimated Number of Respondents: 7,992.

Estimated Number of Response per Respondent: 2.31794.

Estimated Number of Total Annual Response: 18,525.

Estimated Time per Respondent: 1.2741.

Estimated Total Reporting Burden Hours: 23,602.

Estimated Total Recordkeeping Burden Hours: 315.

Estimated Total Burden for Reporting and Recordkeeping: 23,917.

Dated: March 8, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–6120 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Uinta-Wasatch-Cache National Forest Resource Advisory Committee will conduct a meeting in Salt Lake City, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to continue the review of project submittals.

DATES: The meeting will be held on March 31, 2011, from 3 p.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Salt Lake County Government Center, Room S1002, 2001 South State Street, Salt Lake City, Utah. Written comments should be sent to Loyal Clark, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601. Comments may also be sent via e-mail to *lfclark@fs.fed.us*, via facsimile to 801–342–5144.

All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601.

FOR FURTHER INFORMATION CONTACT: Loyal Clark, RAC Coordinator, USDA, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601; 801–342–5117; *lfclark@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review Forest Service project approval letter, (2) discuss travel budget, and (3) review new proposals. 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 9, 2011.

Cheryl Probert,

Deputy Forest Supervisor.

[FR Doc. 2011–6099 Filed 3–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) RAC Admin Updates, (4) Public Comment, (5) New Project Proposals, (6) Project Updates FY 08, 09, 10, (7) Schedule Monitoring Field Trip, (8) General Discussion, (9) Meeting Schedule, (10) Adjourn.

DATES: The meeting will be held on March 21, 2011, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest, Grindstone Ranger District Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose a project or agenda items contact Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988 or Laurie Pearson, Glenn/Colusa RAC Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 160, Stonyford, CA 95979.

FOR FURTHER INFORMATION CONTACT:

Laurie Pearson, Glenn/Colusa RAC Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 160, Stonyford, CA 95979. (530) 963–3128. E-mail: *LLPearson@fs.fed.us.*

Eduardo Olmedo, District Ranger, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt St., Willows, CA 95988. (530) 934–3316. E-mail: *eolmedo@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by March 10, 2011 have the opportunity to address the committee at those sessions.

Dated: March 9, 2011.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2011–5940 Filed 3–15–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The Panel is meeting as authorized under the Community Forest Restoration Act (Title VI, Pub. L. 106–393) and in compliance with the Federal Advisory

Committee Act. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which applications submitted in response to the Collaborative Forest Restoration Program Request For Applications best meet the program objectives.

DATES: The meeting will be held April 25–29, 2011, beginning at 10 a.m. on Monday, April 25 and ending at approximately 4 p.m. on Friday, April 29.

ADDRESSES: The meeting will be held at the Hyatt Place Albuquerque/Uptown, 6901 Arvada Avenue, NE., Albuquerque, NM 87110, (505) 872–9000. Written comments should be sent to Walter Dunn, Cooperative and International Forestry, USDA Forest Service, 333 Broadway SE., Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us,* or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE., Albuquerque.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Assistant Designated Federal Official, (505) 842–3425, Cooperative and International Forestry, USDA Forest Service, 333 Broadway SE., Albuquerque, NM 87102.

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. Panel discussion is limited to Panel members and Forest Service staff. Project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant application review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: March 10, 2011.

Corbin L. Newman, Jr.,

Regional Forester.

[FR Doc. 2011–6098 Filed 3–15–11; 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: U.S. Census Bureau.

Title: Census In Schools Focus Groups.

Form Number(s): None.

OMB Control Number: None.

Type of Request: New collection.

Burden Hours: 135.

Number of Respondents: 90.

Average Hours per Response: 1.5 hours.

Needs and Uses: For the 2010 Census, among the many other outreach efforts, the U.S. Census Bureau implemented the Census in Schools (CIS) Program with three primary objectives: (1) To increase the mail-back response rate of Census forms; (2) to improve accuracy and reduce differential undercount; and (3) to increase cooperation with enumerators in the field during the Census data collection period.

The CIS Program educated primary and secondary school students about the Census; the students, in turn, could inform their parents about the importance of returning the 2010 Census forms. The Census Bureau distributed materials, including promotional brochures, take-home materials, fact sheets, lesson plans, maps, quick start teaching guides, and other aids aimed at increasing the mail-back response and participation rates. The Census Bureau distributed these materials to over 118,000 schools representing grades kindergarten through 12th grade. Some of these materials were in the form of printed copies. Hundreds of thousands of additional copies were downloaded in electronic form from the 2010 Census in Schools Web site.

The purpose of the CIS Program research described in this document is three-fold: (1) To identify the types, content, and design of materials that schools prefer in preparation for the 2020 Census and in the years leading up to the 2020 Census; (2) to assess the barriers to use of the materials, so that the Census Bureau can address how to eliminate or minimize the barriers; and (3) to identify improvements in the CIS program that can be implemented in the near-, mid-, and long-term, including the needs of executive-level educators.

The Census Bureau needs to collect and analyze qualitative data to address the following research questions:

(a) How can the CIS program targeting kindergarten through high school level students, teachers, and administrators be improved for the 2020 Census?

(b) What new methods can the Census Bureau use in going forward during the intercensal years to reach out to educators and students from kindergarten to the college levels in order to maintain strong relationships with the education community?

(c) What are the needs of executive-level educators regarding statistical literacy and the types of materials Federal statistical agencies could provide to be most helpful with regards to statistics education, from the most basic level (kindergarten) to the most advanced (graduate studies)?

(d) What metrics can be used to monitor and assess the impact of the CIS program in the future?

Essentially, the research for which data collection approval is being sought seeks to inform the future direction, composition, and maintenance of this outreach program for the next eight or nine years, in preparation for the 2020 Census.

The Census Bureau proposes to collect qualitative data via six focus groups among CIS school administrators and teachers. The Census Bureau intends to ask CIS program participants about ways the program can be improved, and ways in which their own participation can be enhanced in future years. The resulting qualitative data will be used by Census Bureau management staff to create recommendations for program redesign in order to improve the CIS program in the years leading up to and including the next Census.

Affected Public: Not-for-profit institutions; State, Local or Tribal governments.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB

Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 11, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6116 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Partnership Program Focus Groups and Interviews.

Form Number(s): None.

OMB Control Number: None.

Type of Request: New collection.

Burden Hours: 150.

Number of Respondents: 120.

Average Hours per Response: 48 minnutes.

Needs and Uses: For the 2010 Census, among the many other outreach efforts, the Census Bureau conducted the Partnership Program, involving commercial entities of national scope; State, local and Tribal governments; and regional and local corporations and organizations. The purpose of the Partnership Program was to target historically "hard-to-count" (HTC) areas in hopes of increasing census form mail-back rates. Over 800 National Partners participated in the 2010 Census Partnership Program. The program will continue to be an integral part of future inter-census year promotional activities. The proposed data collection for Partnership Program Research will assist the Census Bureau by (1) identifying the enhancers, incentives, and barriers to maintaining partner relationships over time; (2) investigating the rationales behind organizations refusing to participate in the Partnership Program; and (3) identifying the specific improvements to the Partnership Program that will lead to more engagement by Partnership organizations.

The Census Bureau needs to collect and analyze qualitative data to address the following research questions:

(a) How can the Partnership program be improved and the partnerships be maintained in the future during the intercensal years as well as for the 2020 Census?

(b) What metrics can be used to monitor and assess the impact of the Partnership Program in the intercensal years and for the 2020 Census?

Essentially, the research for which data collection approval is being sought seeks to inform the future direction, composition, and maintenance of this outreach program for the next eight or nine years, in preparation for the 2020 Census.

The Census Bureau proposes to collect qualitative data via six focus groups and 30 individual interviews among national Partnership Program participant organizations. The Census Bureau intends to ask program participants about ways the program can be improved, and ways in which their own participation can be enhanced in future years. The resulting qualitative data will be used by Census Bureau management staff to create recommendations for program redesign in order to improve the program in the years leading to the next Census.

Affected Public: Business or other for-profit; not-for-profit institutions; State, local or Tribal governments.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 11, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–6119 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Proposed Information Collection for Focus Groups and One-on-One Interviews

AGENCY: Office of Response and Restoration, Assessment and Restoration Division and the Office of Habitat Conservation, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice and request for comments on Proposed Information Collection for Focus Groups and One-on-one Interviews for the Elwha River Dam Removal and Floodplain Restoration Ecosystem Service Valuation Pilot Project located on the north central part of the Olympic Peninsula of Washington State.

SUMMARY: As required by the Paperwork Reduction Act of 1995, we will ask the Office of Management and Budget (OMB) to approve the Information Collection (IC) to conduct focus groups and one-on-one interviews, described below. We invite the general public and Federal agencies to comment on this proposed IC.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Dr. Anthony Dvarskas by telephone at 732–872–3090, or by e-mail at *Anthony.Dvarskas@noaa.gov.* You may also contact Dr. Peter Edwards by telephone at 301–713–2325 ext. 210 or by e-mail at *Peter.Edwards@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA is requesting approval for a new IC to conduct focus groups and one-on-one interviews to develop and test the Elwha River Dam Removal and Floodplain Restoration Ecosystem Service Valuation Survey.

The planned removal of two hydroelectric dams on the Elwha River would be one of the largest dam-removal projects in U.S. history. This project, along with restoration actions planned for the floodplain and drained reservoir basins, would have numerous impacts to people of the surrounding region. Impacted groups include recreators who engage in river activities such as fishing and rafting, reservoir users, and members of American Indian Tribes for whom the river has cultural, environmental, and economic significance. The dam removal and restoration actions could also have value to people throughout the Pacific Northwest and the United States, regardless of whether they visit the Elwha River or Olympic Peninsula. Such nonuse value may be significant because the dam removal and habitat restoration will restore the river to more natural conditions and will restore threatened and endangered populations of salmon and other fish species. This project will also address an important gap in research on indirect and nonuse values provided by habitat restoration and protection.

A study of the value of ecological restoration is of particular interest in this location because significant baseline ecological data are available to allow a comparison of ecological values with some of the more obvious use losses associated with the reservoir.

The ability to link results of the study to precise measures of ecosystem changes will be useful in applying the study to future restoration sites, enabling NOAA to evaluate a broader range of ecosystem services provided by future restoration actions.

A nonmarket valuation survey of the U.S. public and members of the Lower Elwha Klallam Tribe will be developed and implemented. To ensure the survey questions and policy scenarios presented in this survey are accurate, easily understood, and the least burdensome, it is important to test the survey with small focus groups and in one-on-one interviews.

II. Method of Collection

Information will be collected through 12 focus groups, 2 stakeholder meetings and 24 one-on-one interviews.

III. Data

Title: Elwha River Dam Removal and Floodplain Restoration Ecosystem Service Valuation Pilot Project.

OMB Control Number: 0648–xxxx.

Type of Review: Regular (request for approval of a new information collection).

Affected Entities: Individuals or households.

Frequency of Response: One time.

Respondent's Obligation: Voluntary.

Annual Reporting and Record-keeping Burden:

Estimated Number of Respondents Annually: 156 (120 for focus groups, 12 for stakeholder meetings, and 24 for one-on-one interviews).

Estimated Burden per Response: 2 hours for focus groups and stakeholder meetings, and 1 hour for one-on-one interviews.

Total Annual Reporting: 300.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

We invite comments concerning this IC on: (1) Whether the collection of information is necessary, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit 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. Although you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 3, 2011.

David G. Westerholm,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–6062 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: April 7 and 8, 2011. On April 7, the meeting will begin at approximately 9 a.m. and adjourn at approximately 5 p.m. On April 8, the meeting will begin at approximately 8:30 a.m. and adjourn at 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, U.S. Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address U.S. Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. If you plan to attend the meeting, please register by Monday, April 4, 2011. You may access the online registration form with the following link: *http://www.regonline.com/csacapr2011.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Dated: March 10, 2011.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2011–6140 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

United States Integrated Ocean Observing System Advisory Committee

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Establishment of and Membership Solicitation for the United States Integrated Ocean Observing System Advisory Committee.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has established and is soliciting applications for membership on the United States Integrated Ocean Observing System Advisory Committee (the Committee), a Federal advisory committee. The Integrated Coastal and Ocean Observation System (ICOOS) Act of 2009 establishes a national integrated System of ocean, coastal, and Great Lakes observing systems, comprised of

Federal and non-Federal components including in situ, remote, and other coastal and ocean observation, technologies, and data management and communication systems. The System is designed to address regional and national needs for ocean information; to gather specific data on key coastal, ocean, and Great Lakes variables; and to ensure timely and sustained dissemination and availability of these data to support a variety of societal benefits. These benefits include supporting national defense; marine commerce; navigation safety; weather, climate, and marine forecasting; energy siting and production; economic development; ecosystem-based management of marine and coastal areas; conservation of ocean and coastal resources; and public safety. The System is also designed to promote research to develop, test, and deploy innovations and improvements in coastal and ocean observation technologies and modeling systems.

The ICOOS Act also requires the Under Secretary of Commerce for Oceans and Atmosphere to establish a System advisory committee to provide advice to the Under Secretary and to the Interagency Ocean Observation Committee, which is responsible for planning for the integrated design, operation, maintenance, enhancement, and expansion of the System.

NOAA will hereby accept applications for membership on the Committee through May 16, 2011. The ICOOS Act of 2009 states: "Members shall be qualified by education, training, and experience to evaluate scientific and technical information related to the design, operation, maintenance, or use of the [Integrated Ocean Observing] System, or use of data products provided though the System." NOAA encourages individuals with expertise in oceanographic data, products, and services; coastal management; fisheries management; coastal and marine spatial planning; geodesy; water levels; and other science-related fields to submit applications for Committee membership. To apply for membership on the Committee, applicants should submit a resume as indicated in the **ADDRESSES** section. NOAA is an equal-opportunity employer.

DATES: Application materials should be sent to the address, e-mail address, or fax number specified and must be received by May 16, 2011.

ADDRESSES: Submit an application for Committee membership, in the form of a resume, to Jessica Geubtner via mail, fax, or e-mail. Mail: 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910; Fax: 301–427–2073; E-mail: *Jessica.geubtner@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Geubtner, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910; Telephone: 301–427–2453, Fax: 301–427–2073; E-mail: *Jessica.geubtner@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice responds to the ICOOS Act of 2009 (Pub. L. 111–11, section 12304), which requires the Under Secretary of Commerce for Oceans and Atmosphere to solicit nominations for Committee membership. The Committee will advise the NOAA Administrator or Interagency Ocean Observation Committee on matters related to the responsibilities and authorities set forth in section 12302 of the ICOOS Act of 2009 and other appropriate matters as the Under Secretary refers to the Committee for review and advice.

The United States Integrated Ocean Observing System Advisory Committee will provide advice on:

(a) Administration, operation, management, and maintenance of the System;

(b) Expansion and periodic modernization and upgrade of technology components of the System;

(c) Identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in dissemination information to end-user communities and to the general public; and

(d) Any other purpose identified by the Under Secretary of Commerce for Oceans and Atmosphere or the Interagency Ocean Observation Committee.

The Committee's voting members will be appointed by the Under Secretary of Commerce for Oceans and Atmosphere. Members shall be qualified by education, training, and experience to evaluate scientific and technical information related to the design, operation, maintenance, or use of the System, or the use of data products provided through the System. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. Members will be appointed for three-year terms, renewable once. One Committee member will be designated by the Under Secretary as chairperson. Full-time officers or employees of the United States may not be appointed as a voting member. Members will be appointed as special Government employees (SGEs) for purposes of section 202(a) of title 18, United States Code. Members serve at the discretion of the Under Secretary and are subject to government ethics standards. Members of the Committee will not be compensated for service on the Committee, but they may be allowed travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

The Committee will meet at least once each year, and at other times at the call of the Under Secretary, the Interagency Ocean Observation Committee, or the Committee Chairperson.

Individuals Selected for Committee Membership

Upon selection and agreement to serve on the United States Integrated Ocean Observing System Advisory Committee, one becomes a Special Government Employee (SGE) of the United States Government. An SGE is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis. After the membership selection process is complete, applicants who are selected to serve on the Committee must complete the following actions before they can be appointed as a Committee member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting conducted through NOAA Workforce Management); and

(b) Confidential Financial Disclosure Report: As an SGE, one is required to file a Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. One may find the Confidential Financial Disclosure Report at the following Web site: *http://www.usoge.gov/forms/form_450.aspx.*

Dated: March 8, 2011.

David M. Kennedy,

Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 2011–6063 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the ACE Basin (South Carolina) National Estuarine Research Reserve and the Georgia Coastal Management Program.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L. Evaluation of a National Estuarine Research Reserve requires findings concerning the extent to which a State has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The CZMA requires continuing review of the performance of States with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a State has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. A public meeting will be held as part of the site visit. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the dates of the site visits for the listed evaluations and the dates, local times, and locations of the public meetings during the site visits.

Date and Time: The ACE Basin (South Carolina) National Estuarine Research Reserve evaluation site visit will be held May 2–6, 2011. One public meeting will be held during the week. The public meeting will be held on Wednesday, May 4, 2011, at 6:30 p.m. local time in the conference room at the Environmental Learning Center, Edisto Island State Park, Oyster Row Lane, Edisto Island, South Carolina.

The Georgia Coastal Management Program evaluation site visit will be held May 23–27, 2011. One public meeting will be held during the week. The public meeting will be held on Wednesday, May 25, 2011, at 5:30 p.m. local time at the Shipman Environmental Center at the Georgia Department of Natural Resources Coastal Resources Division, One Conservation Way, Brunswick, Georgia.

ADDRESSES: Copies of the States' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding these programs are encouraged and will be accepted until 15 days after the public meeting held for the program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182, or *Kate.Barba@noaa.gov*.

Dated: March 9, 2011.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

Federal Domestic Assistance Catalog 11.419. Coastal Zone Management Program Administration.

[FR Doc. 2011–6061 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA300

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Dolphin Wahoo Advisory Panel (AP) in North Charleston, SC.

DATES: The meeting will take place April 7–8, 2011. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; telephone: (866) 358–6255.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Members of the Dolphin Wahoo AP will meet from 1 p.m.–5 p.m. on April 7, 2010 and from 8:30 a.m. until 12 p.m. on April 8, 2011.

The AP will receive an overview of actions in the Comprehensive Annual Catch Limit (ACL) Amendment relative to dolphin and wahoo including the establishment of ACLs and Accountability Measures (AMs) for each species as required by the Magnuson-Stevens Fishery Conservation and Management Act. The AP will provide the recommendations to the Council.

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 auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–6118 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA298

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) River Herring and Shad Ad Hoc Committee will hold a webinar meeting.

DATES: The meeting will be held on Friday, April 1, 2011, from 1 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held via webinar. Registration for the webinar is available at: *https://www1.gotomeeting.com/register/949596009.* A listening station will also be made available at the Council's address below.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore PhD, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop recommendations for the Council regarding options available to the Council for management of River Herring (blueback and alewife) and Shad (American and hickory) stocks. Any briefing materials will be posted on the Council's Web site, *http://www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least 5 days prior to the meeting date.

Dated: March 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–6095 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA297

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Snapper Grouper Advisory Panel (AP) in Charleston, SC.

DATES: The meeting will take place April 13–14, 2011. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Hwy, Charleston, SC 29407; telephone: (800) 334–6660.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Members of the Snapper Grouper AP will meet from 9 a.m. until 5 p.m. on April 13, 2011 and from 9 a.m. until 12 p.m. on April 14, 2011.

AP members will receive updates on the following amendments: the Comprehensive Annual Catch Limit (ACL) Amendment addressing ACLs and accountability measures for species within the snapper grouper management complex, dolpin, wahoo and golden crab, Regulatory Amendment 11 to the Snapper Grouper Fishery Management Plan (FMP) addressing alternatives for ending overfishing of specked hind and warsaw grouper relative to the current deepwater closure in place, and Amendment 24 regarding the rebuilding of red grouper stocks. The AP will also receive an update on the meeting of the Scientific and Statistical Committee (SSC) and the status of Amendment 18A to the Snapper Grouper FMP regarding commercial regulations for golden tilefish and black sea bass. Regional management and management in the Florida Keys will be discussed. The AP will provide recommendations to the Council.

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 auxiliary aids should be directed to the council office (*see* **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–6094 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA302

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its King and Spanish Mackerel Advisory Panel (Mackerel AP) in North Charleston, SC.

DATES: The meeting will take place April 6–7, 2011. *See* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; telephone: (866) 358–6255.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer,

South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Members of the Mackerel AP will meet from 1 p.m.–5 p.m. on April 6, 2011 and from 8:30 a.m. until 12 p.m. on April 7, 2011.

The Mackerel AP will receive an overview of Amendment 18 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) for the South Atlantic and Gulf of Mexico addressing Annual Catch Limits (ACLs) and Accountability Measures (AMs) for species included in the FMP as required by the Magnuson-Stevens Fishery Conservation and Management Act and provide recommendations. The AP will also review Amendment 19 to the Coastal Migratory Pelagics FMP regarding alternatives for bag limit sales and provide recommendations.

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 auxiliary aids should be directed to the council office (*see* **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–6123 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA265

Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for March 30, 2011, 2–3:30 p.m., Eastern Daylight Time.

ADDRESSES: Conference call. Public access is available at SSMC3, Room 14836, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Heidi Lovett, (301) 713–9070 x-118; e-mail: *Heidi.Lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and other information are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

This meeting is convening to discuss and consider recommendations of the MAFAC Commerce Subcommittee on the Department of Commerce and NOAA complementary draft national aquaculture policies that support sustainable marine aquaculture in the United States. This agenda is subject to change.

Dated: March 11, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6153 Filed 3–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Subcommittee Meeting of the Board of Advisors to the President, Naval Postgraduate School

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of The Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Subcommittee Meeting of the Board of Advisors (BOA) to The President, Naval Postgraduate School (NPS) will be held. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, April 26, 2011, from 8 a.m. to 4 p.m. and on Wednesday, April 27, 2011, from 8 a.m. to 12 p.m. Pacific Time Zone.

ADDRESSES: The meeting will be held at the Naval Postgraduate School, Herrmann Hall, 1 University Circle, Room M–9, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA 93943–5001, telephone number 831–656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elicit the advice of the Board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between NPS and the Air Force Institute of Technology (AFIT). The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent. General deliberations leading to provisional findings for referral to the BOA to the Presidents of the NPS and the Naval War College Committee will follow at a later date. Individuals without a DoD government/CAC card require an escort at the meeting location. For access, information, or to send written comments regarding the NPS BOA contact Ms. Jaye Panza, Designated Federal Officer, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax 831–656–3145 by April 19, 2011.

Dated: March 10, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–6105 Filed 3–15–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Advanced Placement Incentive Program; Office of Elementary and Secondary Education; Overview Information; Advanced Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.330C.

DATES:

Applications Available: March 16, 2011.

Deadline for Notice of Intent to Apply: April 15, 2011.

Deadline for Transmittal of Applications: May 16, 2011.

Deadline for Intergovernmental Review: July 14, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Advanced Placement Incentive (API) program awards competitive grants designed to increase the successful participation of low-income students in advanced placement courses and tests. The program expands opportunities for low-income students to take college-level classes and earn college credit while still in high school. The program also supports efforts to raise the rigor of the academic curriculum for all students attending high-poverty schools.

Priorities: This competition includes two absolute priorities and one competitive preference priority.

Absolute Priority 1: Promoting Science, Technology, Engineering, and Mathematics (STEM) Education and the competitive preference priority are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) (2010 NFP). In accordance with 34 CFR 75.105(b)(2)(iv), *Absolute Priority 2: Expanding Access for Low-Income Individuals to Advanced Placement Programs* is from section 1705(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C 6535(c).

Absolute Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1: Promoting Science, Technology, Engineering, and Mathematics (STEM) Education

Projects that are designed to address the following priority area:

Providing students with increased access to rigorous and engaging coursework in STEM.

Note: The Advanced Placement Incentive program is designed to increase successful participation of low-income students in advanced placement courses and tests. Consequently, in responding to this priority, applicants must demonstrate how the project is designed to increase the access of low-income students to rigorous and engaging pre-advanced placement and advanced placement coursework in STEM.

Absolute Priority 2: Expanding Access for Low-Income Individuals to Advanced Placement Programs

This priority supports projects that expand access for low-income individuals to advanced placement programs by—

(1) Demonstrating an intent to carry out activities that target schools with a high concentration of low-income students (as defined in the notice) or local educational agencies (LEAs) serving schools with a high concentration of low-income students;

(2) Demonstrating a pervasive need for access to advanced placement incentive programs;

(3) Demonstrating a focus on developing or expanding advanced placement programs and participation in the core academic areas of English, mathematics, and science;

(4) Involving business and community organizations in the activities to be assisted;

(5) Assuring the availability of matching funds from State, local, or other sources to pay for the costs of activities to be assisted; and

(6) Demonstrating an intent to carry out activities to increase the availability of, and participation in, on-line advanced placement courses.

Note: In responding to this absolute priority, an application must—

(1) Identify the specific schools (both middle and high schools) that would receive project services, and provide evidence that each school currently (*i.e.,* during the 2010–11 school year) has a high concentration of low-income students; and

(2) Identify the amount and sources of matching funds. Consistent with 20 U.S.C. 6536, matching contributions under the API program must be resources that add "new monies" to an applicant's current level of funding for advanced placement activities.

Competitive Preference Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets this priority.

This priority is:

Turning Around Persistently Lowest-Achieving Schools

Projects that are designed to address the following priority area:

Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: To meet this competitive preference priority, the applicant must provide evidence in its application that its proposed project will serve one or more persistently lowest-achieving schools.

Definitions: The following definitions are taken from the API program authorizing statute in section 1707 of the ESEA (20 U.S.C. 6537) and the 2010 NFP.

Advanced placement test means an advanced placement test administered by the College Board or approved by the Secretary (20 U.S.C. 6537).

Note: The Secretary approves as advanced placement tests International Diploma Programme examinations administered by the International Baccalaureate Organization, and Cambridge International A and AS Levels administered by Cambridge University International Examinations. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

High concentration of low-income students, used with respect to a school, means a school that serves a student population 40 percent or more of whom are low-income individuals (20 U.S.C. 6537).

Low-income individual means an individual who is determined by a State educational agency (SEA) or LEA to be a child, ages 5 through 19, from a low-income family, on the basis of data used by the Secretary to determine allocations under section 1124 of the ESEA, data on children eligible for free or reduced-price lunches under the National School Lunch Act, data on children in families receiving assistance under Part A of title IV of the Social Security Act, or data on children eligible to receive medical assistance under the medicaid program under title XIX of the Social Security Act, or through an alternate method that combines or extrapolates from those data (20 U.S.C. 6537).

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools

in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest achieving schools, a State must take into account both: (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the "all students" group (NFP 2010).

Program Authority: 20 U.S.C. 6531–6532; 6535–6537.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2011 does not include funds for this program. In place of this and several other narrowly targeted programs that seek to improve student achievement in high schools or provide an accelerated curriculum, the Administration has proposed to create, through the reauthorization of the ESEA reauthorization, a broader program, College Pathways and Accelerated Learning, that would support efforts to increase preparation for college matriculation and success through the introduction of advanced courses in high-poverty middle and high schools as well as other accelerated curriculum options (such as dual high school/college enrollment and early college schools) in those schools. However, we are inviting applications for the API program to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000-$650,000.

Estimated Average Size of Awards: $425,000.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. Eligible Applicants

(a) SEAs;

(b) LEAs, including charter schools that are considered LEAs under State law; or

(c) National nonprofit educational entities with expertise in advanced placement services.

Note: In the case of an eligible entity that is an SEA, the SEA may use API grant funds to award subgrants to LEAs to enable those LEAs to carry out authorized activities that support the absolute priorities for this competition.

2.a. *Cost Sharing or Matching:* In order to meet *Absolute Priority 2: Expanding Access for Low-Income Individuals to Advanced Placement Programs* for this competition, an applicant must provide matching funds from State, local, or other sources to pay for the costs of activities to be assisted.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Funds provided under this program must be used only to supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals to pay for the cost of advanced placement test fees or to expand access to advanced placement or pre-advanced placement courses (20 U.S.C. 6536). This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 76.569.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from the program office, contact: Ivonne Jaime, U.S. Department of Education, 400 Maryland Avenue, SW., LBJ Building, Room 3E310, Washington, DC 20202–6200. Telephone: (202) 260–1519 or by e-mail: *AdvancedPlacementProgram@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at: 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send a notification of its intent to apply for funding to *AdvancedPlacementProgram@ed.gov* by April 15, 2011. The notification of intent to apply for funding is optional. Applicants that do not supply this e-mail notification may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We encourage you to limit the narrative to the equivalent of no more than 40 pages and suggest that you use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Titles, headings, footnotes, quotations, references, and captions, as well as text in charts, tables, figures, and graphs, can be single spaced.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.
- Number all pages consecutively using the style 1 of 40, 2 of 40, and so forth.
- Include a table of contents with page references.

The suggested page limit does not apply to the table of contents; forms; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; the resumes; or the letters of support.

However, the suggested page limit does apply to all of the application narrative section. We further encourage applicants to limit to no more than 20 pages any attachments or appendices that are not resumes or letters of support.

3. *Submission Dates and Times:*

Applications Available: March 16, 2011.

Deadline for Notice of Intent to Apply: April 15, 2011.

Deadline for Transmittal of Applications: May 16, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 14, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the API program, CFDA number 84.330C, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the API program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.330, not 84.330C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic

submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ivonne Jaime, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E310, Washington, DC 20202–4260. FAX: (202) 205–4921.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330C) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your

grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and, where otherwise noted, sections 1702 and 1705 of the ESEA (20 U.S.C. 6532 and 6535) and are listed in the following paragraphs.

Note: The maximum score for all selection criteria is 95 points. The points assigned to each criterion or subcriterion are indicated in parentheses.

Need for the Project

In determining the need for the proposed project, we will consider the extent to which the application demonstrates a pervasive need for access to advanced placement incentive programs by low-income individuals (10 points) (20 U.S.C. 6535(c)(1)).

Quality of Project Design

In determining the quality of the design of the proposed project, we will consider the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (10 points).

(2) The extent to which the proposed project demonstrates a focus on developing or expanding advanced placement programs and participation in the core academic areas of English, mathematics, and science (15 points) (20 U.S.C. 6532(c)(4).

(3) The extent to which the proposed project will expand access to and participation in advanced placement incentive programs, particularly for low-income individuals (10 points) (20 U.S.C. 6535(d)(F)).

(4) The extent to which the proposed project will increase the numbers of students who receive advanced placement test scores for which college academic credit is awarded (10 points) (20 U.S.C. 6532(7)).

(5) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students (15 points).

Quality of the Management Plan

In determining the quality of the management plan for the proposed project, we will consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (10 points).

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(3) Consistent with 34 CFR 75.209(a)(1)(iv), the extent to which the applicant demonstrates that it will have the capacity to report annually the data required by section 1705(f) of the ESEA and section VI. 5. (Performance Measures) of this notice (10 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Transparency:* After awards are made under this competition, all of the applications selected for funding, together with reviewer scores and comments for those applications, will be posted on the Department's Web site.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established two performance measures for assessing the effectiveness of the API program in improving the successful participation in advanced placement courses and tests by students attending public high schools served by API grants. These measures are:

(1) The ratio of Advanced Placement (AP), International Baccalaureate (IB), and other advanced placement tests recognized by the Secretary taken in public high schools served by API grants to the number of seniors enrolled at those high schools.

(2) The ratio of AP, IB, and other approved advanced placement tests passed (AP tests receiving scores of 3 or higher, IB tests receiving scores of 4 or higher, or other advanced placement tests receiving equivalent scores) by low-income students in public high schools served by API grants to the number of low-income seniors enrolled at those schools.

These measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are

advised to give careful consideration to these measures in identifying their goals and objectives and conceptualizing the approach and evaluation of their proposed projects. If funded, applicants will be asked to collect and report data in their performance and final reports about progress with respect to these measures. In addition, applicants will also be asked to collect and report data in their performance and final reports on the statutorily mandated reporting requirements outlined in section 1705(f) of the ESEA.

6. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Grant Administration:* Projects funded under this competition are encouraged to budget for a two-day meeting for project directors to be held annually in Washington, DC.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Ivonne Jaime, U.S. Department of Education, 400 Maryland Avenue, SW., LBJ Building, room 3E310, Washington, DC 20202–6200. Telephone: (202) 260–1519 or by e-mail: *AdvancedPlacementProgram@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in extr Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 11, 2011.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–6138 Filed 3–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities Meeting

AGENCY: Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities, Office of Special Education and Rehabilitative Services, U. S. Department of Education.

ACTION: Notice of an open meeting via conference call.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10 (a) (2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: April 1, 2011.

Time: 10:00 a.m.–5:00 p.m., Eastern Standard Time.

ADDRESSES: The Commission will meet via conference call on April 1, 2011. Members of the public have the option of participating in the open meeting remotely. Remote access will be provided via an Internet webinar service utilizing VoiP (Voice Over Internet Protocol). The login address for members of the public is *https://aimpsc.ilinc.com/join/ccszfyh.* This login information is also provided via the Commission's public listserv at *pscpublic@lists.cast.org* and posted at the following site: *http://www2.ed.gov/about/bdscomm/list/aim/index.html.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; telephone: (202) 245–7642, fax: 202–245–7638.

SUPPLEMENTARY INFORMATION: The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities (the Commission) is established under Section 772 of the Higher Education Opportunity Act, Public Law 110–315, dated August 14, 2008. The Commission is established to (a) conduct a comprehensive study, which will—(I) assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely delivery and quality of accessible instructional materials for postsecondary students with print disabilities, as well as the effective use of such materials by faculty and staff; and (II) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a time frame comparable to the availability of instructional materials for postsecondary nondisabled students.

In making recommendations for the study, the Commission shall consider—(I) how students with print disabilities may obtain instructional materials in accessible formats within a timeframe comparable to the availability of instructional materials for nondisabled students; and to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students; (II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in Section 674(e)(3) of the Individuals with Disabilities Education Act, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students; (III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network; (IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education;

(V) solutions utilizing universal design; and (VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats.

During the meeting, task force 3 (Market Model) and task force 1 (Best Practices) will brief the entire Commission on their work and initial recommendations. The Commission will also receive an update from representatives of the Office of Postsecondary Education (OPE) on the status of its higher education grant program for students with disabilities. The Commission will discuss the status of the final report and will receive updates from the other two Commission task forces.

Given the limited meeting time, the Commission does not anticipate that there will be an opportunity for public comment during the teleconference meeting. Members of the public are encouraged to submit written comments to the AIM Commission Web site at aimcommission@ed.gov, and the Commission will respond to the comments if possible.

Members of the public who would like to offer comments as part of the meeting may submit written comments to *AIMCommission@ed.gov* or by mail to Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities, 550 12th St., SW., Room PCP–5113, Washington, DC 20202. All submissions will become part of the public record. Members of the public may also join the Commission's list serv at *PSCpublic@lists.cast.org.*

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public. Records are kept of all Commission proceedings and are available for public inspection at the Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202, Monday–Friday during the hours of 8:00 a.m. to 4:30 p.m.

Additional Information

Individuals who will need accommodations for a disability in order to listen to the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Elizabeth Shook at (202) 245–7642, no later than March 28, 2011. We will make every attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The conference call will be accessible to individuals with disabilities.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Dated: March 10, 2011.

Alexa Posny,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2011–6089 Filed 3–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before May 16, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Dallas Woodruff, U.S. Department of Energy, Lear Printing Specialist, MA–42, 1000 Independence Ave, SW., Washington, DC 20585; or by fax at (202) 586–0753 or by e-mail at *dallas.woodruff@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dallas Woodruff at the address listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–0100; (2) Information Collection Request Title: Printing and Publishing Activities; (3) Type of Review: Renewal; (4) Purpose: Collection of this data is a Congressional Joint Committee on Printing requirement: The Department reports on information gathered and compiled from its facilities nation-wide on the usage of in-house printing and duplicating activities as well as all printing production from external Government Printing Office (GPO) and GPO vendors; (5) Annual Estimated Number of Respondents: 160; (6) Annual Estimated Number of Total Responses: 160 (7) Annual Estimated Number of Burden Hours: 1,570; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: No costs associated with record keeping.

Authority: This information is reported to the congressional Joint Committee on Printing pursuant to its regulations. Joint Committee on Printing, Government Printing and Binding Regulations, Title IV, Rules 48–55 (Feb. 1990), in S. Pub. No. 109–21, 101st Cong., 2d Sess., at 27–29 (1990).

Issued in Washington, DC, on March 9, 2011.

Dallas Woodruff,

Lead Printing Specialist, Office of Administrative Management and Support.

[FR Doc. 2011–6114 Filed 3–15–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. 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: Thursday, March 31, 2011; 9 a.m.–5 p.m.

Friday, April 1, 2011; 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel on the River, Jantzen Beach, 909 North Hayden Island Drive, Portland, Oregon 97217.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA, 99352; Phone: (509) 376–2048; or E-mail: *Paula.Call@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Agency Updates, including progress on the American Recovery and Reinvestment Act (Office of River Protection and Richland Operations Office; Washington State Department of Ecology; U.S. Environmental Protection Agency)
- Committee Updates, including: Tank Waste Committee; River and Plateau Committee; Health, Safety and Environmental Protection Committee; Public Involvement Committee; and Budgets and Contracts Committee
- Potential Board Advice
  - 2011–2013 Budget
  - Regulatory document timelines/review
  - Radioactive solid waste burial grounds
  - Update on the Tank Closure Plan
  - Update on single shell tanks integrity report
  - Board debriefing of State of the Hanford Site meetings
- Board Business
  - Committee Reports
  - Review 6-month accomplishments
  - Announcement of committee leadership

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, 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 Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Paula Call's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on March 11, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–6109 Filed 3–15–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–118–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

Take notice that on March 2, 2011, Texas Eastern Transmission, LP (Texas Eastern), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP11–118–000, an application pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon in place an inactive pipeline segment in West Cameron Blocks 566, 565, and 548, offshore Louisiana, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 [1], all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Texas Eastern proposes to abandon in place approximately 4.5 miles of 20-inch diameter pipeline (Segment) on its Line 41–A–6 in West Cameron Blocks 566, 565, and 548, offshore Louisiana. The Segment is inactive and no longer contributes to the natural gas volumes moved through Line 41–A–6. Texas Eastern states that its abandonment of the Segment would not result in the termination of any services to any of its customers and that no firm transportation agreements are tied to the Segment. Texas Eastern also states that it would cost approximately $19,930,000 to replicate the facilities today.

[1] 21 FERC ¶ 62,199 (1982).

Any questions concerning this application may be directed to Berk Donaldson, Director, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, via telephone at (713) 627–4488, facsimile (713) 627–5947, or *e-mail: bdonaldson@spectraenergy.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after 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 and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), 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 filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: March 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6051 Filed 3–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13829–001]

David Creasey; Notice of Application Tendered for Filing With the Commission, Accepted for Filing With the Commission, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Intent To Waive Solicitation of Additional Study Requests, Intent To Waive Scoping, Intent To Waive Three Stage Consultation, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 13829–001.

c. *Date filed:* February 4, 2011.

d. *Applicant:* David Creasey.

e. *Name of Project:* Creasey Hydropower Project.

f. *Project Description:* The Creasey Hydropower Project would consist of the following: (1) A 21-foot-wide, 6.5-foot-high concrete check structure which would back up water in Lincoln Creek; (2) a 1,650-foot-long, 21-inch-diamter PVC penstock with an intake structure and trashrack; (3) one turbine/generator unit with a total installed capacity of 14–20 kilowatts; (4) a 12-foot long, 14-foot wide concrete slab on which the turbine/generator unit would sit; (5) an approximately 75-foot-long, 12-inch-diamater PVC pipe which would return flows to the Lincoln Creek Drainage Ditch; and (6) an approximately 900-foot-long buried transmission line from the turbine/generator unit to the Creasey residence. The project would have an annual generation of 122.4 megawatt-hours. All project facilities would be located on private land owned by the applicant. The applicant proposes to operate the project as run-of-river.

g. *Location:* The project is located on Lincoln Creek and the Lincoln Creek Drainage Ditch on the Fort Hall Reservation in Fort Hall, Idaho. The project would be located on entirely on private property owned by the applicant.

h. Filed Pursuant to: 18 CFR 4.61 of the Commission's regulations.

i. *Applicant Contact:* Mr. David Creasey, P.O. Box 61, Fort Hall, ID 83202, (208) 785–0164.

j. *FERC Contact:* Ryan Hansen, (202) 502–8074, or e-mail at *ryan.hansen@ferc.gov.*

k. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–13829). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY (202) 502–8659.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. This application has been accepted for filing and is now ready for environmental analysis.

m. The license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of the water quality certification.

n. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian Tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item p below.

Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

o. Due to the small size and remote location of this project, the applicant's close coordination with Tribal, State, and Federal agencies during the preparation of the application, and the lack of any study requests submitted during pre-filing consultation, we intend to waive scoping and shorten the filing and comment date on final terms and conditions, recommendations, and prescriptions. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period for the application, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping.

p. Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions: The project was originally noticed on February 9, 2011, with the 60-day timeframe specified in 18 CFR 4.34(b) for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions shortened to 30 days due to the small size and remote location of this project, as well as the applicant's close coordination with the Tribal Fish and Wildlife Department, Bureau of Indian Affairs Irrigation, the Shoshone-Bannock Tribes Cultural Resources/Heritage Tribal Office, the Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Idaho Department of Environmental Quality, Idaho Fish and Game, and the Idaho State Historic Preservation Office in the preparation of the application. The deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions has been extended 14 days from the issuance of this notice to March 23, 2011. All reply comments must be filed with the Commission within 45 days from the date of this notice.

All documents may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

q. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. Procedural schedule and final amendments: We intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38 and for National Environmental Policy Act scoping. The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Comments, recommendations, and terms and conditions due.	March 23, 2011.
Reply comments due	April 7, 2011.
Notice of the availability of the EA.	July 14, 2011.

Dated: March 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6049 Filed 3–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at NYISO Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend upcoming New York Independent System Operator, Inc. (NYISO) meetings, as well as other subcommittee or working group meetings that are not currently scheduled, but that are typically scheduled on short notice or meetings that are scheduled on short notice based on items arising from the agenda as posted on the NYISO Web site.[1] The Commission and Commission staff may attend the following meetings:

NYISO Business Issues Committee

- March 9, 2011 (Rensselaer, NY)
- April 13, 2011 (Rensselaer, NY)
- May 11, 2011 (Rensselaer, NY)
- June 1, 2011 (Rensselaer, NY)
- July 13, 2011 (Rensselaer, NY)
- August 10, 2011 (Rensselaer, NY)
- September 14, 2011 (Rensselaer, NY)
- October 12, 2011 (Rensselaer, NY)
- November 9, 2011 (Rensselaer, NY)
- December 14, 2011 (Rensselaer, NY)

[1] NYISO Subcommittees, Task Forces, and Working Groups of the three primary committees (Management, Business Issues, and Operating) meet on a variety of topics; they convene and dissolve on an as-needed basis. Therefore, staff may monitor different working groups as issues arise and according to postings on the NYISO Web site.

NYISO Management Committee

- March 30, 2011 (Rensselaer, NY)
- April 27, 2011 (Rensselaer, NY)
- May 25, 2011 (Rensselaer, NY)
- June 14, 2011 (Rensselaer, NY)
- July 27, 2011 (Rensselaer, NY)
- August 31, 2011 (Rensselaer, NY)
- September 27, 2011 (Rensselaer, NY)
- October 26, 2011 (Rensselaer, NY)
- November 23, 2011 (Rensselaer, NY)
- December 21, 2011 (Rensselaer, NY)

NYISO ICAP Working Group

- March 10, 2011 (Rensselaer, NY)
- March 18, 2011 (Rensselaer, NY)
- March 24, 2011 (Rensselaer, NY)
- April 18, 2011 (Rensselaer, NY)
- May 16, 2011 (Rensselaer, NY)
- July 11, 2011 (Rensselaer, NY)
- August 19, 2011 (Rensselaer, NY)
- September 12, 2011 (Rensselaer, NY)
- October 17, 2011 (Rensselaer, NY)
- November 14, 2011 (Rensselaer, NY)

NYISO Operating Committee

- March 17, 2011 (Rensselaer, NY)
- April 14, 2011 (Rensselaer, NY)
- May 12, 2011 (Rensselaer, NY)
- June 2, 2011 (Rensselaer, NY)
- July 14, 2011 (Rensselaer, NY)
- August 11, 2011 (Rensselaer, NY)
- September 15, 2011 (Rensselaer, NY)
- October 13, 2011 (Rensselaer, NY)
- November 30, 2011 (Rensselaer, NY)
- December 15, 2011 (Rensselaer, NY)

NYISO Transmission Planning Advisory Subcommittee

- Various dates

NYISO Budget and Priorities Working Group

- Various dates

NYISO Credit Policy Task Force

- Various dates

NYISO Price Responsive Load Working Group

- Various dates

Interconnection Issues Task Force

- Various dates

For additional meeting information, *see: http://www.nyiso.com/public/committees/calendar/index.jsp.*

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission including the following:

Docket Nos. EL07–39 and ER08–695, *New York Independent System Operator, Inc.*

Docket No. EL09–57, *Astoria Gas Turbine Power LLC* v. *New York Independent System Operator, Inc.*
Docket No. EL10–033, *New York Independent System Operator, Inc.*
Docket No. EL10–70, *TC Ravenswood, LLC* v. *New York Independent System Operator, Inc.*
Docket No. ER01–3155, *New York Independent System Operator, Inc.*
Docket Nos. ER01–3001–021/ER03–647–012 and ER01–3001–022/ER03–647–013, *New York Independent System Operator, Inc.*
Docket No. ER04–449, *New York Independent System Operator, Inc.*
Docket No. ER04–230, *New York Independent System Operator, Inc.*
Docket No. ER07–612, *New York Independent System Operator, Inc.*
Docket No. ER08–850, *New York Independent System Operator, Inc.*
Docket No. ER08–867, *New York Independent System Operator, Inc.*
Docket No. ER08–1281, *New York Independent System Operator, Inc.*
Docket No. ER09–1142, *New York Independent System Operator, Inc.*
Docket No. ER09–1204, *New York Independent System Operator, Inc.*
Docket No. ER09–1682, *New York Independent System Operator, Inc.*
Docket No. ER09–405, *New York Independent System Operator, Inc.*
Docket No. ER10–65, *New York Independent System Operator, Inc.*
Docket No. ER10–424, *New York Independent System Operator, Inc.*
Docket No. ER10–290, *New York Independent System Operator, Inc.*
Docket No. ER10–554, *New York Independent System Operator, Inc.*
Docket No. ER10–555, *New York Independent System Operator, Inc.*
Docket No. ER10–573, *New York Independent System Operator, Inc.*
Docket No. ER10–1657, *New York Independent System Operator, Inc.*
Docket No. ER10–1359, *New York Independent System Operator, Inc.*
Docket No. ER10–2220, *New York Independent System Operator, Inc.*
Docket No. ER11–2224, *New York Independent System Operator, Inc.*
Docket No. ER10–3043, *New York Independent System Operator, Inc.*
Docket No. ER11–2842, *New York Independent System Operator, Inc.*
Docket No. ER11–2547, *New York Independent System Operator, Inc.*
Docket No. ER06–1014, *New York Independent System Operator, Inc.*
Docket No. ER11–1844, *New York Independent System Operator, Inc.*
Docket No. ER11–2048, *New York Independent System Operator, Inc.*
Docket No. RM04–7, *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities.*
Docket No. RM10–11, *Integration of Variable Energy Resources.*
Docket No. RM10–15, *Mandatory Reliability Standards for Interconnection Reliability Operating Limits.*
Docket No. RM10–16, *System Restoration Reliability Standards*
Docket No. OA08–52, *New York Independent System Operator, Inc.*
Docket No. OA09–26, *New York Independent System Operator, Inc.*

The meetings are open to stakeholders. For more information, contact Jesse Hensley, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6228 or *Jesse.Hensley@ferc.gov.*

Dated: March 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6052 Filed 3–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD11–3–008]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice of Technical Conference

In an order issued on October 8, 2004, the Commission set forth a guideline for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order). The Commission required OFAs to submit their costs using the OFA Cost Submission Form. The October 8 Order also announced that a technical conference would be held for the purpose of reviewing the submitted cost forms and detailed supporting documentation.

The Commission will hold a technical conference for reviewing the submitted OFA costs. The purpose of the conference will be for OFAs and licensees to discuss costs reported in the forms and any other supporting documentation or analyses.

The technical conference will be held on March 24, 2011, in Conference Room 3M–3 at the Commission's headquarters, 888 First Street, NE., Washington, DC. The technical conference will begin at 2 p.m. (EDT).

The technical conference will also be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact the Ace-Federal Reporters, Inc., at 202–347–3700, or 1–800–336–6646. Two weeks after the post-forum meeting, the transcript will be available for free on the Commission's e-library system. Anyone without access to the Commission's Web site or who has questions about the technical conference should contact W. Doug Foster at (202) 502–6118 or via e-mail at *annualcharges@ferc.gov.*

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), (202) 208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Dated: March 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6050 Filed 3–15–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0896; FRL–8864–2]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: Worker Protection Standard Training and Notification and identified by EPA ICR No. 1759.06 and OMB Control No. 2070–0148, is scheduled to expire on November 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before May 16, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0896, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0896. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* 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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8515; *fax number:* (703) 305–5884; *e-mail address: negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates 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.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are agricultural employers, including employers in farms as well as nursery, forestry, and greenhouse establishments.

Title: Worker Protection Standard Training and Notification.

ICR numbers: EPA ICR No. 1759.06, OMB Control No. 2070–0148.

ICR status: This ICR is currently scheduled to expire on November 30, 2011. 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 title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Codified under 40 CFR part 170, the Worker Protection Standard (WPS) establishes requirements to protect agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries, and in greenhouses.

The regulations contain the standard and workplace practices, which are designed to reduce or eliminate worker exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry interval); basic safety training (and voluntary training verification) and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide

exposure; and provisions for emergency assistance. The training verification program facilitates compliance with the training requirements by providing a voluntary method for employers to verify that the required safety information has been provided to workers and handlers.

Information is exchanged between agricultural employers and employees at farm, forest, nursery, and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

Burden statement: The total annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,776,131 hours, with the incremental burden of the various activities ranging from 2 minutes per respondent to provide initial basic safety information to 45 minutes per respondent for handler training. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 309,085.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: Varies by type of response under the same respondent category.

Estimated total annual burden hours: 1,776,131 hours.

Estimated total annual costs: $82,462,645. This includes an estimated burden cost of $0 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is no change in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 7, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–5976 Filed 3–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–8865–6]

GeoLogics Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to GeoLogics Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). GeoLogics Corporation has been awarded a contract to perform work for OPP, and access to this information will enable GeoLogics Corporation to fulfill the obligations of the contract.

DATES: GeoLogics Corporation will be given access to this information on or before March 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, 20460–0001; *telephone number:* (703) 305–8338; *e-mail address: steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Contractor Requirements

Under Contract No. EP10H002173, the contractor will perform the following: The Laboratory Data Integrity Branch (LDIB) within the Office of Compliance (OC) is charged with the responsibility of conducting Good Laboratory Practice (GLP) inspections under FIFRA and the Toxic Substances Control Act (TSCA). The LDIB utilizes a database known as Laboratory lnformation and Study Audit (LISA) to aid them in targeting future inspections and tracking and documenting historical inspections. LISA maintains records of test substance chemicals and their metabolites, the registrants and sponsors of these chemicals, and the laboratories employed by the sponsors to test these chemicals. LISA also maintains EPA inspection findings, the identity of the inspection team, and the dates the inspection was conducted. LISA also aids the branch is generating end of year reports to the branch chief and correspondence.

LISA also has the ability to interface with the OPP database known as, Office of Pesticide Programs lnformation network (OPPIN). This link provides LDIB with a list of laboratories regulated by GLPS and therefore subject to GLP inspections. Information from OPP provides up-to-date information regarding studies, test facilities,

sponsors, guidelines, and test substance chemicals.

The purpose of this Statement of Work is to identify, evaluate, and write new system software for the modernization of the LDIB data management system known as LISA. The LDIB utilizes LISA to aid the branch in targeting, monitoring and documenting historical GLP inspection Information. Additionally, LISA maintains historical GLP inspection findings, inspection team Information, and inspection dates. LISA also aids the LDB by generating end of year reports to the branch chief, including EPA correspondence to the regulated community. The objective of LISA modernization is to: Increase the accessibility of LISA from remote locations, *i.e.,* Denver field office, reduce inefficiencies created by the existing antiquated software, improve the overall performance of the system, and ensure better integrity of the data stored in the database system.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with GeoLogics Corporation, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, GeoLogics Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to GeoLogics Corporation until the requirements in this document have been fully satisfied. Records of information provided to GeoLogics Corporation will be maintained by EPA Project Officers for the contract. All information supplied to GeoLogics Corporation by EPA for use in connection with these contract will be returned to EPA when GeoLogics Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contract, Government property, Security measures.

Dated: March 4, 2011.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011–5974 Filed 3–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0248; FRL–8866–4]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective September 12, 2011, unless the Agency receives a written withdrawal request on or before September 12, 2011. The Agency will consider a withdrawal request postmarked no later than September 12, 2011. Comments must be received on or before April 15, 2011 for registrations for which the registrant requested a waiver of the 180–day comment period.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before September 12, 2011. Comments must be received on or before April 15, 2011 for registrations for which the registrant requested a waiver of the 180–day comment period.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2010–0248, by one of the following methods:

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

FOR FURTHER INFORMATION CONTACT: Christopher Green, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–0367; *e-mail address: green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2010–0248. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name,

active ingredient, and specific uses deleted. The following requests have a 30–day comment period.

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product name	Active ingredient	Delete from label
264–330	TEMIK brand 15G Aldicarb Pesticide	Aldicarb	Use on Coffee.
352–604	DuPont Tanos	Famoxadone & Cymoxanil	Leaf Petioles subgroup 4B.
8536–12	Methyl Bromide 99.5%	Methyl Bromide	Soil fumigation uses.
81964–1	Acephate Technical	Acephate	Residential Turf, home gardens, ornamentals, flowers, shrubs & trees.
81964–2	Acephate 75% SP	Acephate	Residential Turf, home gardens, ornamentals, flowers, shrubs & trees.
81964–3	Acephate 90% SP	Acephate	Residential Turf, home gardens, ornamentals, flowers, shrubs & trees.

The following request has a 180-day comment period.

EPA Registration No.	Product name	Active ingredient	Delete from label
63838–4	BCDMH Tabs	2,4-Imidazolidnedione, 1-bromo-3 chloro-5,5-dimethyl.	Once through cooling water, pool & spa, and food contact pulp & paper uses.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before September 12, 2011 to discuss withdrawal of the application for amendment. Comments must be received on or before April 15, 2011 for registrations for which the registrant requested a waiver of the 180-day comment period. This 180-day or 30-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company name and address
264	Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
352	E.I. DuPont De Nemours and Co., Inc., Attn: Manager, U.S.—Registration, DuPont Crop Protection, 1007 Market Street, Wilmington, DE 19898–0001.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Company No.	Company name and address
8536	Soil Chemicals Corporation, dba/Cardinal Professional Products, P.O. Box 782, 8770 Hwy. 25, Hollister, CA 95024–0782.
63838	EnviroTech Chemical Services, Inc., 500 Winmoore Way, Modesto, CA 95358.
81964	ChemStarr LLC, 21 Hubble, Irvine, CA 92618.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Christopher Green using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than September 12, 2011. Comments must be received on or before April 15, 2011 for registrations for which the registrant requested a waiver of the 180-day comment period.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute a product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 2, 2011.

Michael Hardy,

Acting, Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011–5619 Filed 3–15–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: CRANESVILLE BLOCK COMPANY, INC., Station WKAJ, Facility ID 160470, BMP–20110207AET, From LITTLE FALLS, NY, To SAINT JOHNSVILLE, NY; CUMULUS LICENSING LLC, Station KRRF, Facility ID 10329, BPH–20110218ABV, From GOLETA, CA, To OAK VIEW, CA; CUMULUS LICENSING LLC, Station KRUZ, Facility ID 3159, BPH–20110218ABW, From SANTA BARBARA, CA, To GOLETA, CA; EDWARD DE LA HUNT, Station NEW, Facility ID 165964, BNPH–20060308AIA, From RUGBY, ND, To CRARY, ND; JEM BROADCASTING CO., INC, Station 970912MF, Facility ID 88358, BMPH–20110216ABY, From GREENWOOD, AR, To GREENLAND, AR; LAZER LICENSES, LLC, Station KCAL, Facility ID 55416, BP–20110215AES, From REDLANDS, CA, To GRAND TERRACE, CA; M&M BROADCASTERS, LTD., Station KWBT, Facility ID 21494, BPH–20091211AFR, From MEXIA, TX, To BELLMEAD, TX; MICHAEL GREENE, Station KOYD, Facility ID 166015, BMPH–20110128ABF, From GACKLE, ND, To TOWER CITY, ND; RADIO 74 INTERNATIONALE, Station KGHW, Facility ID 177344, BMPED–20110128AEK, From PIERRE, SD, To ONIDA, SD.

DATES: Comments may be filed on or before May 16, 2011.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, Electronic Engineer, 445 12th Street, SW., Room 2–B450, Washington, DC 20554, (202) 418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2011–6147 Filed 3–15–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011353–035.

Title: The Credit Agreement.

Parties: Crowley Latin America Services, LLC; Dole Ocean Cargo Express; King Ocean Services de Venezuela/King Ocean Services Limited; Seaboard Marine of Florida, Inc.; and Seaboard Marine Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes APL Co. PTE Ltd. as a party to the Agreement.

Agreement No.: 011426–050.

Title: West Coast of South America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; APL Co. Pte Ltd.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Interocean Lines, Inc.; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd. (dba Ecuadorian Line); and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW, Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add CMA CGM, S.A. as a party to the agreement.

Agreement No.: 012108–002.

Title: The World Liner Data Agreement.

Parties: ANL Container Line Pty Ltd.; A.P. Moller-Maersk A/S; CMA CGM S.A.; Compania Chilena de Navegacion Interoceanica S.A.; Compania Sud Americana de Vapores S.A. ; Hamburg-Sud; Hapag-Lloyd AG; Independent Container Line Ltd.; Mediterranean Shipping Company S.A.; Orient Overseas Container Line Ltd.; and United Arab Shipping Company S.A.G.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 627 I Street, NW; Suite 1100; Washington, DC 20006.

Synopsis: The amendment adds the Evergreen Line Joint Service Agreement, Hanjin Shipping Company, Ltd., Hyundai Merchant Marine Co., Ltd., and Turkon Konteyner Tasimacilik ve Denizcilik A.S. as parties to the Agreement.

Agreement No.: 200955–002.

Title: Howland Hook/Global Terminal Agreement.

Parties: Global Terminal & Container Services, LLC. and New York Container Terminal, LLC.

Filing Party: Christine Riedy, Esq.; Hill, Betts & Nash, LLP; 200 Liberty Street; 26th Floor; New York, New York 10281.

Synopsis: The amendment deletes Howland Hook Leasing as a party to the agreement, updates the names of the remaining parties, and changes the name of the agreement to New York Container Terminal/Global Container Terminal Agreement.

By Order of the Federal Maritime Commission.

Dated: March 11, 2011.

Rachel Dickon,

Assistant Secretary.

[FR Doc. 2011–6136 Filed 3–15–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Arkman Logistics Inc. (NVO), 1001 Fargo Avenue, Elk Grove Village, IL 60007. Officer: Kevin Ho Yoel Cho, President/Secretary/Treasurer (Qualifying Individual). Application Type: New NVO License

Atlantic Global LLC (NVO & OFF), 1250 Newark Turnpike, Kearny, NJ 07032.

Officer: Jeff Lelchuk, Managing Member (Qualifying Individual). Application Type: New NVO & OFF License.

BCargo Logistics, S.A. de C.V. (NVO), Av. Revolucion #725–A, Col. Jardin Espanol Monterrey, Nuevo Leon, Mexico 64820. Officers: Bernardo Villarreal Garza, Shareholder/Sole Administrator (Qualifying Individual), Gerardo Villarreal Garza, Shareholder/Representative Agent. Application Type: New NVO License.

Cargo Management & Logistics Corp. (NVO & OFF), 13445 SW 290th St, Homestead, FL 33033. Officers: Cristian Afanador, Vice President (Qualifying Individual) Vivian Cobo-Afanador, President/Secretary/Treasurer. Application Type: New NVO & OFF License.

Carico USA, LLC (NVO & OFF), 4801 Woodway Drive, Houston, TX 77056. Officers: Francisco Gonzalez, Managing Member (Qualifying Individual), Raul Ruben Amprimo, Member. Application Type: New NVO & OFF License.

Century Distribution Systems, Incorporated dba Century Express (NVO & OFF), 1485–E Route 1, South, Suite 100, Iselin, NJ 08830. Officers: Mark Thomas Gorman, President (Century Division) (Qualifying Individual), Iain C. Aitchison, CEO/President/Director. Application Type: Trade Name Change & Add NVO Service.

Comis Global Logistics, Inc. (NVO), 18005 Savarona Way Carson, CA 90746. Officer: Frank Noah, President/Secretary/CFO (Qualifying Individual), Application Type: New NVO License.

Dedicated Global Carriers, LLC (NVO & OFF), 4627 Town N Country Blvd., Tampa, FL 33615. Officers: Joyce E. Behringer, Manager/Secretary (Qualifying Individual), Jonathan Jones, Manager/President. Application Type: QI Change.

Geoffrey Au dba ABC Logistics Company (NVO), 2250 Gellert Blvd., South San Francisco, CA 94080. Officer: Geoffrey Au, Owner (Qualifying Individual), Application Type: New NVO License.

Icon North America, Inc. (NVO & OFF), 6704 SW 114 PL, Suite F, Miami, FL 33173. Officers: Vital Fernando Cordova, Secretary/Director (Qualifying Individual), Trisha L. Gonzalez, President/Director. Application Type: New NVO & OFF License.

Intercargo USA Corp. (NVO), 12555 Orange Dr, Davie, FL 33330. Officers: Gerben Zwaga, President (Qualifying Individual), Honorino Landa, Director. Application Type: QI Change.

Nunez Shipping Inc. (NVO), 1388 NW 29th St., Miami, FL 33142. Officers: Osvaldo Nunez, President (Qualifying Individual), Brunilda Ramirez, Corporate Secretary. Application Type: New NVO License.

Reto Shipping Corp. (NVO & OFF), 8364 NW 66 St., Miami, FL 33166. Officers: Loraine Noboa-Gonzalez, Vice President/Secretary (Qualifying Individual), Angel R. Gonzalez, President. Application Type: Add NVO Service. Transglad, Inc. (NVO & OFF), 525 Neptune Avenue, Brooklyn, NY 11224. Officers: Svetlana Kogut, Treasurer/Secretary (Qualifying Individual), Robert Kogut, President. Application Type: QI Change.

U.S. Global Logistics Corp. (NVO), 2867 Cropsey Ave., Brooklyn, NY 11214.Officer: Kehong Zheng, President/Secretary (Qualifying Individual). Application Type: New NVO License.

WTG Logistics, Inc. dba WTG International (NVO & OFF), 140 Epping Road, Exeter, NH 03833. Officers: William Walsh, President/CEO (Qualifying Individual), James McKenna, Vice President/CFO. Application Type: QI Change.

Yusen Air & Sea Services (U.S.A.) Incorporated (NVO & OFF), 377 Oak Street, Garden City, NJ 11530. Officers: Karen Yvonne Quintana, Vice President (Qualifying Individual), Kazuo Ishizuka, President/CEO, Application Type: Name Change & QI Change.

Dated: March 11, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–6134 Filed 3–15–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ralph C. Stayer and Shelly A. Stayer, and the RFS 2010 Irrevocable Trust F/B/O Ralph C. Stayer,* all of Naples, Florida; to acquire voting shares of Hometown Bancorp, Ltd., and thereby indirectly acquire control of Hometown Bank, both of Fond du Lac, Wisconsin.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *The Greenwood Childrens' Trust, Brentwood, Tennessee, with Jane Allison Crewse, Brentwood, Tennessee; Ann Greenwood Watson, Owensboro, Kentucky; Helen Virginia Futvoye, Jackson, Mississippi; and William Lawton Greenwood, Columbia, South Carolina, as trustees;* to retain control of First United, Inc., and thereby indirectly retain control of First National Bank of Muhlenberg County, Kentucky, both of Central City, Kentucky.

Board of Governors of the Federal Reserve System, March 11, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–6108 Filed 3–15–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990—New; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the

estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of Adolescent Pregnancy Prevention Approaches (PPA) and the Impact Evaluation of the Teen Pregnancy Prevention Program Grantees: First Follow-up Data Collection—OMB No. OS–0990—NEW—Office of Adolescent Pregnancy Programs.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. OAH, ACF, and ASPE are proposing first follow-up data collection activity as part of the PPA and TPP Impact evaluations. Respondents will be asked to answer carefully selected questions about risk and protective factors related to teen pregnancy, intermediate outcomes, and behavioral outcomes.

OAH will jointly oversee with ASPE the Impact Evaluation of the Teen Pregnancy Prevention Program Grantees (TPP Impact Evaluation). The TPP Impact Evaluation will be a random assignment evaluation which will determine whether program models funded as part of the OAH evidence-based Teen Pregnancy Prevention Initiative are effective at preventing teen pregnancy, reducing sexually transmitted infections, and/or impacting sexual risk behaviors.

The findings from both evaluations will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

ESTIMATED ANNUALIZED BURDEN TABLE

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Evaluation of Adolescent Pregnancy Prevention Approaches (PPA)				
Baseline Instrument	3,060	1	30/60	1,530
Impact Evaluation of the Teen Pregnancy Prevention Program Grantees (TPP Evaluation)				
Baseline Instrument	6,868	1	30/60	3,434
Total for both evaluations				4,964

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–6077 Filed 3–15–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990—New; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Outcome Evaluation of Teenage Pregnancy Prevention: Integrating Services, Programs, and Strategies through Community-wide Initiatives—OMB No. 0990—NEW—Office of Adolescent Pregnancy Programs.

The Office of Adolescent Health and the Centers for Disease Control and Prevention (CDC) are working collaboratively to address the high pregnancy rate of women between the ages of 15–19 by demonstrating the effectiveness of innovative, multi-component, community-wide initiatives in preventing teen pregnancy and reducing rates of teen births in communities with the highest rates, with a focus on reaching African American and Latino youth aged 15–19.

Components of these efforts include (1) implementing evidence-based or evidence-informed prevention programs; (2) linking teens to quality health services; (3) educating stakeholders (community leaders, parents and other constituents) about relevant evidence-based or evidence-informed strategies to reduce teen pregnancy and data on needs and resources in target communities; and (4) supporting the sustainability of the community-wide teen pregnancy prevention effort.

The main objective for the proposed Outcome Evaluation of Teenage Pregnancy Prevention: Integrating Services, Programs, and Strategies through Community-wide Initiatives is to measure risk behaviors, pregnancies, and use of contraceptives and family planning services among youth. The data collection instrument for the proposed study is a modified version of a recently approved survey (OMB No. 0970–0360 Expiration date 7/31/2013). Clearance is being requested to expand the utilization of a modified version of the previously-approved instrument.

The Outcome Evaluation of Teenage Pregnancy Prevention: Integrating Services, Programs, and Strategies through Community-wide Initiatives will focus on the combined change of two proportions: (1) The proportion of youth who have not engaged in sexual intercourse during the past 12 months and (2) the proportion of youth who have engaged in sexual intercourse but have used contraception consistently during the past 12 months. To determine if the change in this proportion of interest in the intervention community is significantly different from the control community is one of the most important parameters to be estimated. Power analysis determined that 1,200 surveys per community will be sufficient to detect this difference. The precise number of youth surveyed will depend on the response rates, and will be between 1,200 and 1,500 per community.

TABLE: ESTIMATED ANNUALIZED BURDEN

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Evaluation of Adolescent Pregnancy Prevention Approaches Household Survey	Youth aged 15–19	9,000	1	45/60	6,750

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–6088 Filed 3–15–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0322; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Safe Harbor for Federally Qualified Health Centers Arrangements-Extension OMB No. 0990–0322—Office of Inspector General.

Abstract: The Office of the Inspector General (OIG), Office of the Secretary (OS), Department of Health and Human Services (HHS) is requesting a 3-year extension of clearance for the data collection under the anti-kickback statute, as described below. In order for an arrangement between a health center and a donor individual or entity to enjoy safe harbor protection, the arrangement (1) Must be set out in writing (§ 1001.952(w)(1)(i)(A)); (2) the written agreement must be signed by the parties (§ 1001.952(w)(1)(i)(B)); (3) the written agreement must cover, and specify the amount of, all good, items, services, donations, or loans provided by the individual or entity to the health center (§ 1001.952(w)(1)(i)(C)); (4) the health center must document its basis for its reasonable expectation that the arrangement will benefit a medically underserved population (§ 1001.952(w)(3)); and (5) the health center, at reasonable intervals, must reevaluate the arrangement to ensure that it is expected to continue to benefit a medically underserved population, and must document the re-evaluation contemporaneously (§ 1001.952(w)(4)).

OIG may request to see documentation kept pursuant to the safe harbor in order to determine compliance with the terms of the safe harbor and the fraud and abuse laws. Compliance with the safe harbor is voluntary, and no party is ever required to comply with the safe harbor.

The safe harbor does not entail a routine and continuous affirmative collection of data form the regulated community. However, health centers that choose to avail themselves of the safe harbor must have initial documentation and a re-evaluation of the arrangement at least annually. The respondents are businesses and/or other private sector for-profit and not-for-profit institutions.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Health Center	1873	1	1	1,873

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–6087 Filed 3–15–11; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990—New; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Evaluation of Adolescent Pregnancy Prevention Approaches and the Impact Evaluation of the Teen Pregnancy Prevention Program Grantees: Baseline Data Collection—OMB No. OS–0990—NEW—Office of Adolescent Health in collaboration with the Administration for Children and Families and the Office of the Assistant Secretary for Planning and Evaluation.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH has provided funding to ACF to oversee the implementation of the Evaluation of Adolescent Pregnancy Prevention Approaches (PPA). PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites.

OAH will jointly oversee with ASPE the Impact Evaluation of the Teen Pregnancy Prevention Program Grantees (TPP Impact Evaluation). The TPP Impact Evaluation will be a random assignment evaluation which will determine whether program models funded as part of the OAH evidence-based Teen Pregnancy Prevention Initiative are effective at preventing teen pregnancy, reducing sexually transmitted infections, and/or impacting sexual risk behaviors.

The findings from both evaluations will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

ESTIMATED ANNUALIZED BURDEN TABLE

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Evaluation of Adolescent Pregnancy Prevention Approaches (PPA)				
Baseline Instrument	3,600	1	30/60	1,800
School Records, Performance, and Program Participation Data Collection	8	1	8	64
Impact Evaluation of the Teen Pregnancy Prevention Program Grantees (TPP Evaluation)				
Baseline Instrument	8,080	1	30/60	4,040
School Records, Performance and Program Participation Data Collection	12	1	8	96
Total for both evaluations				6,000

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–6078 Filed 3–15–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office on Women's Health, Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: National Survey of Single Parent Caregivers—OMB No. 0990-NEW-OWH; HHS, Office on Women's Health.

Abstract: The National Survey of Single Parent Caregivers will measure the size, characteristics, and unmet needs of single parents providing care for an adult family member or friend. Single parent caregivers provide support services and financial assistance for two generations without the aid of a married partner. Survey results will be used to develop national estimates of the costs borne by single parent caregivers, their psychosocial burden, stress, and diminished social and leisure opportunities, and suggest policy options that mitigate the burden on single parent caregivers. The survey will be administered once under a one-year request, and will contact individuals using computer-assisted telephone interviewing (CATI) methods.

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Single Parent Caregiver Survey Instrument	Single Parent Caregivers	1,000	1	18/60	300

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–6086 Filed 3–15–11; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–11DD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project: Raising Public Awareness for Deep Vein Thrombosis/Pulmonary Embolism—NEW—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Blood Disorders, located within the National Center on Birth Defects and Developmental Disabilities, implements health promotion and wellness programs designed to prevent secondary conditions in people with bleeding and clotting disorders.

There are few public health problems as serious as deep vein thrombosis (DVT) and pulmonary embolism (PE), yet these conditions receive little attention. DVT/PE is an under diagnosed, serious, preventable medical condition that occurs when a blood clot forms in a deep vein. These clots usually develop in the lower leg, thigh, or pelvis, but they can also occur in the arm. In more than one third of people affected by DVT, clots can travel to the lungs and cause PE, a potentially fatal condition.

The precise number of people affected by DVT/PE is unknown, but estimates range from 300,000 to 600,000 annually in the United States. DVT/PE is associated with substantial morbidity and mortality: One third of people with DVT/PE will have a recurrence within 10 years and one third of people die within 1 month of diagnosis. Among people who have had a DVT, one third will have long-term complications (post-thrombotic syndrome), such as swelling, pain, discoloration, and scaling in the affected limb. In some cases, the symptoms can be so severe that a person can become disabled. More troubling, sudden death is the first symptom in

about one quarter of people who have a PE.

The Division of Blood Disorders submitted questions to the 2007 HealthStyles survey to determine the public's knowledge of DVT, its common symptoms, and risk factors. Although over 60% of respondents identified pain and swelling as symptoms, 60% did not identify tenderness (often the first sign of DVT) as a symptom. Only 38% of respondents knew that a DVT was a blood clot in a vein, and most could not identify common risk factors for DVT such as sitting for a long period of time (*e.g.,* during air travel); having a leg or foot injury; having a family member who has had a DVT; taking birth control pills; or getting older; and certain groups could not identify risk factors that specifically applied to their risk. The results of this survey demonstrates the need for greater awareness of DVT, and its risk factors and the data show that there are many opportunities to develop audience specific messages that are age specific and culturally appropriate.

Much of the morbidity and mortality associated with DVT/PE could be prevented with early and accurate diagnosis and management. DVT/PE is preventable. It is important for people to be able to recognize the signs and symptoms and know when to seek care and available treatment. Individuals, families, and their support communities can reduce their risk by understanding DVT/PE and its risk factors. DVT/PE affects people of all races and ages. Many of the acquired risks such as obesity, advanced age, air travel, chronic diseases, cancer, and hospitalization are increasing in the United States, and we can expect to see increasing numbers of people affected by DVT/PE.

The CDC's Division of Blood Disorders will conduct focus groups to develop messaging concepts that will be used in a public awareness campaign to build knowledge and awareness of DVT/PE, increase recognition of the symptoms and risk factors for DVT/PE, and empower people to take action.

The project will address these objectives in two stages: In the first stage the Contractor selected will conduct eight (8) formative focus groups with nine (9) participants in each focus group to explore consumer knowledge, attitudes, and beliefs (KABs) toward DVT. It is estimated that 144 respondents will have to be screened in order to recruit 72 focus group participants. Message concepts will be developed from insights emerging from this exploratory research phase. The Contractor will conduct eight (8) focus groups with nine (9) participants in each focus group during the second stage to test the message concepts and identify possible ways to present the messages. It is estimated that 144 respondents will have to be screened in order to recruit 72 focus group participants. The informed consent will take approximately 6 minutes to complete, for a total burden of 7 hours.

The Contractor selected will work with CDC to identify and recruit focus group participants. Formative research participants will include adults (aged 25–64) who have been hospitalized in the last year and seniors (aged 65–80). Message testing participants will include adults (aged 25–64) who have been hospitalized in the last year and seniors (aged 65–80). Participants will be recruited to participate in one of sixteen in-person focus groups that will be conducted in the following cities:

- Atlanta, Baltimore, Pittsburgh, and Tampa (formative research task), and
- Atlanta, Baltimore, Pittsburgh, and Tampa (message testing task)

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Seniors (65–80) Adults (25–64) recently hospitalized	Formative research stage: Participant Screener and Recruitment Script.	144	1	5/60	12
Seniors (65–80) Adults (25–64) recently hospitalized	Message testing stage: Re-screener	144	1	9/60	22
Seniors (65–80) Adults (25–64) recently hospitalized	Formative Research stage: Moderator's Guide.	72	1	1.5	108
Seniors (65–80) Adults (25–64) recently hospitalized	Formative Research stage: Informed Consent.	72	1	6/60	7
Seniors (65–80) Adults (25–64) recently hospitalized	Message testing stage: Moderator's Guide.	72	1	1.5	108
Seniors (65–80) Adults (25–64) recently hospitalized	Message testing stage: Informed Consent.	72	1	6/60	7
Total					264

Dated: March 10, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–6107 Filed 3–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0338]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S. (OMB No. 0920–0338, exp. 4/30/2011)—Extension—Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has the primary responsibility for the Department of Health and Human Services (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from the use of smokeless tobacco products and other forms of tobacco use through programs of information, education and research.

Since 1994, as required by the Comprehensive Smokeless Tobacco Education Act of 1986 (CSTHEA, 15 U.S.C. 4401 *et seq.,* Public Law 99–252), CDC has collected information about the ingredients used in smokeless tobacco products and their nicotine content. Respondents are commercial smokeless tobacco product manufacturers, packagers, or importers (or their representatives), who are required by the CSTHEA to submit ingredient reports to HHS on an annual basis.

Respondents are not required to submit specific forms; however, they are required to meet reporting guidelines and to submit the ingredient report by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies currently required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report.

Ingredient reports for new products are due at the time of first importation. Thereafter, ingredient reports are due annually on March 31. Information is submitted to OSH by mailing a written report on the respondent's letterhead, by CD, three-inch floppy disk, or thumb drive. Electronic mail submissions are not accepted.

Upon receipt and verification of the annual ingredient and nicotine data reports, OSH issues a Certificate of Compliance to the respondent. OSH also uses the information to report to the Congress (as deemed appropriate) discussing the health effects of these ingredients.

In this Extension request, there are no changes to the estimated number of respondents, the estimated burden per response, or the information collection methods. There are no costs to respondents other than their time. The total estimated annualized burden hours are 18,843.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokeless Tobacco Manufacturers, Packagers, and Importers	11	1	1,713

Dated: March 10, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–6106 Filed 3–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2011–0002]

Draft Action Plan—A Public Health Action Plan To Combat Antimicrobial Resistance

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is publishing this notice requesting public comment on the draft *A Public Health Action Plan to Combat Antimicrobial Resistance.* HHS/CDC is publishing this notice on behalf of the HHS Interagency Task Force on Antimicrobial Resistance. The draft Action Plan and supporting documents can be found at *http://www.regulations.gov.*

DATES: Written comments must be received on or before April 15, 2011. Comments received after April 15, 2011 will be considered to the fullest extent possible.

ADDRESSES: Written comments may be submitted to the following address: Centers for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases, Division of Healthcare Quality Promotion, Office of Antimicrobial Resistance, Attn: Antimicrobial Resistance Action Plan, Docket No. CDC–2011–0002, 1600 Clifton Rd., NE., Mailstop A–07, Atlanta, Georgia 30333.

You may also submit written comments electronically to: *http://www.regulations.gov.* All comments received will be posted publicly without change, including any personal or proprietary information provided. To download an electronic version of the plan, access *http://www.regulations.gov.*

Written comments, identified by Docket No. CDC–2011–0002 will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Daylight Time, at 1600 Clifton Road, NE., Atlanta, Georgia 30333. Please call ahead to (404) 639–4000 and ask for a representative from the Office of Antimicrobial Resistance to schedule your visit. Comments may also be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Wolf, Centers for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases, Division of Healthcare Quality Promotion, Office of Antimicrobial Resistance; 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333, (404) 639–4000.

SUPPLEMENTARY INFORMATION: The HHS Interagency Task Force on Antimicrobial Resistance (hereafter referred to as the Task Force) was created in 1999 to coordinate the activities of Federal agencies in addressing antimicrobial resistance (AR) in recognition of the increasing importance of AR as a public health threat. The Task Force is co-chaired by

the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). The Task Force also includes the Agency for Healthcare Research and Quality (AHRQ), the Centers for Medicare and Medicaid Services (CMS), the Health Resources and Services Administration (HRSA), the HHS Office of the Assistant Secretary for Preparedness and Response (HHS/ASPR), the Department of Agriculture (USDA), the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Environmental Protection Agency (EPA).

In 2001, the Task Force developed an initial Action Plan, outlining specific issues, goals, and actions important for addressing the problem of AR. This document, entitled *A Public Health Action Plan to Combat Antimicrobial Resistance, Part I: Domestic Issues,* reflected a broad-based consensus of participating Federal agencies, which was reached with individual input from State and local health agencies, universities, professional societies, pharmaceutical companies, healthcare delivery organizations, agricultural producers, consumer groups, and other members of the public. Continued collaboration with these partners has been vital to achieving successful implementation of the Action Plan.

This draft document, *A Public Health Action Plan to Combat Antimicrobial Resistance,* is a revision of the 2001 interagency action plan. The revised Action Plan provides an updated blueprint for specific, coordinated Federal action to address emerging threats in AR. The document covers a broad spectrum of AR issues, addressing resistance in a wide range of pathogens (bacteria, viruses, fungi, and parasites) and settings (human medicine, veterinary medicine, agriculture, animal production, and others).

The Action Plan includes action items organized into four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The Action Plan contains specific action items, projects, and implementation steps. Wherever possible, action items are populated with specific projects or implementation steps to provide greater specificity for planned Federal activities. The action items, projects, and implementation steps do not represent an exhaustive list of activities.

Dated: March 11, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–6100 Filed 3–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Comment Request

Title: Personal Responsibility Education Program (PREP) Multi-Component Evaluation.

OMB No.: New collection.

Description: The Family Youth Services Bureau (HHS/ACF/ACYF/FYSB) and the Office of Planning Research and Evaluation (HHS/ACF/OPRE) in the Administration for Children and Families (ACF) are proposing three data collection activities to be undertaken for the Personal Responsibility Education Program (PREP) Multi-Component Evaluation.

The impact study included in the PREP Multi-Component Evaluation is a random assignment evaluation which will expand available evidence on whether the replication of evidence-based effective programs, or the substantial incorporation of elements of these programs, funded as part of the Personal Responsibility Education Program, are effective at delaying sexual activity, increasing condom or contraceptive use for sexually active youth, or reducing pregnancy among youth. The evaluation will document and test a range of pregnancy prevention approaches in up to five program sites. The findings from the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

This **Federal Register** Notice is to notify the public regarding Data Collection for the Baseline, Field Collection, and In-Depth Implementation Components of the Impact and In-Depth Implementation Evaluation of the Personal Responsibility Education Program (PREP) Multi-Component Evaluation.

Field Collection: The field collection activity involves the collection of information from observations of program activities and interviews with a range of experts and persons involved with programs about various aspects of existing prevention programs and topics the experts view as important to address through evaluation. These data will be used to help enhance decisions about the types of programs to be evaluated in the studies.

In-Depth Implementation: The implementation data collection activity as part of the in-depth implementation portion of the PREP Multi-Component Evaluation involves the collection of information from program records and site visits at two to three points in the program implementation period. Understanding the programs, documenting their implementation and context, and assessing fidelity of implementation will allow for description of each implemented program and the treatment-control contrast evaluated in each site. It will also help in interpreting impact findings, differences in impacts across programs, and differences in impacts across locations or population subgroups.

Baseline: The baseline data collection activity will present respondents with carefully selected questions about demographics and risk and protective factors related to teen pregnancy. Also proposed is a collection of school records, performance, and program participation for the youth. Information from this data collection will be used to perform meaningful analysis to determine significant program effects.

Respondents:

Field Clearance: Researchers; Policy Experts; State Level Coordinators; Program Directors; Program Staff; Program Participants; School Administrators.

In-Depth Implementation: General Staff; Community Members; Frontline Staff; Participating Youth; and Control Group Schools.

Baseline: Study participants (*i.e.,* adolescents, and schools and organizations responsible for administrative data); Schools and Organizations.

ANNUAL BURDEN ESTIMATES

	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Field clearance instrument:				
Discussion Guide for use with Researchers, Policy Experts, and State Level Coordinators	10	1	1	10
Discussion Guide for Use with Program Directors	20	2	2	80
Discussion Guide for Use with Program Staff	40	1	2	80
Focus Group Discussion Guide for use with Program Participants	100	1	1.5	150
Discussion Guide for Use with School Administrators	70	1	1	70
Short Survey with Program Directors	70	1	0.25	17.5
Short Survey with Program Staff	140	1	0.25	35
Short Survey with School Administrators	70	1	0.25	17.5
Estimated Annual Burden Sub-total for Field Clearance				460
In-Depth Implementation Instrument:				
Master Topic Guide Interviews for General Staff and Community Members	40	1	1.5	60
Focus Group Discussion Guide with Frontline Staff	30	1	1.5	45
Focus Group Discussion Guide with Participating Youths	150	1	1.5	225
Focus Group Discussion Guide with Control Group Schools About Counterfactuals	40	1	1	40
Estimated Annual Burden Sub-total for In-Depth Implementation				370
Baseline Instrument:				
Baseline Instrument for study participants	2500	1	.5	1250
Administrative Data Collection instrument for Schools and Organizations	100	1	4	400
Estimated Annual Burden Sub-total for Baseline				1650
TOTAL Estimated Annual Burden				2640

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 9, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–5962 Filed 3–15–11; 8:45 am]

BILLING CODE 4184–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0541]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Special Protocol Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Special Protocol Assessment" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 26, 2010 (75 FR 65636), 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 0910–0470. 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 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6092 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0468]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 2011 (76 FR 2127), 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 0910–0233. 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 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6091 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0122]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Focus Groups About Drug Products, as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Focus Groups About Drug Products, as Used by the Food and Drug Administration" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 2010 (75 FR 39541), 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 0910–0677. The approval expires on July 31, 2012. 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 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6093 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No.FDA–2011–N–0085]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics

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 the proposed extension of the collection of information concerning the guidance for industry on cooperative manufacturing arrangements for licensed biologics.

DATES: Submit either electronic or written comments on the collection of information by May 16, 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: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr, PI50–400B, Rockville, MD 20850, 301–796–3794, *Juanmanuel.Vilela@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.

Guidance For Industry: Cooperative Manufacturing Arrangements for Licensed Biologics—(OMB Control Number 0910–0629—Extension)

The guidance document provides information concerning cooperative manufacturing arrangements applicable to biological products subject to licensure under section 351 of the Public Health Service Act (42 U.S.C. 262). The guidance addresses several types of manufacturing arrangements (*i.e.,* short supply arrangements, divided manufacturing arrangements, shared manufacturing arrangements, and contract manufacturing arrangements) and describes certain reporting and recordkeeping responsibilities, associated with these arrangements, including the following: (1) Notification of all important proposed changes to production and facilities, (2) notification of results of tests and investigations regarding or possibly impacting the product, (3) notification of products manufactured in a contract facility, and (4) standard operating procedures as follows:

1. Notification of All Important Proposed Changes to Production and Facilities

Each licensed manufacturer in a divided manufacturing arrangement or shared manufacturing arrangement must notify the appropriate FDA Center regarding proposed changes in the manufacture, testing, or specifications of its product, in accordance with § 601.12 (21 CFR 601.12). In the guidance, we recommend that each licensed manufacturer that proposes such a change should also inform other participating licensed manufacturer(s) of the proposed change.

For contract manufacturing arrangements, we recommend that the contract manufacturer should share with the license manufacturer all important proposed changes to production and facilities (including introduction of new products or at inspection). The license holder is responsible for reporting these changes to FDA § 601.12).

2. Notification of Results of Tests and Investigations Regarding or Possibly Impacting the Product

In the guidance, we recommend the following for contract manufacturing arrangements:

- The contract manufacturer should fully inform the license manufacturer of the results of all tests and investigations regarding or possibly having an impact on the product; and
- The license manufacturer should obtain assurance from the contractor that any FDA list of inspectional observations will be shared with the license manufacturer to allow evaluation of its impact on the purity, potency, and safety of the license manufacturer's product.

3. Notification of Products Manufactured in a Contract Facility

In the guidance, we recommend for contract manufacturing arrangements that a license manufacturer cross reference a contract manufacturing facility's Master Files only in circumstances involving certain proprietary information of the contract manufacturer, such as a list of all products manufactured in a contract facility. In this situation, the license manufacturer should be kept informed of the types or categories of all products manufactured in the contract facility.

4. Standard Operating Procedures

In the guidance, we (FDA) remind the license manufacture that the license manufacturer assumes responsibility for compliance with the applicable product and establishment standards (21 CFR 600.3(t)). Therefore, if the license manufacturer enters into an agreement with a contract manufacturing facility, the license manufacturer must ensure that the facility complies with the applicable standards. An agreement between a license manufacturer and a contract manufacturing facility normally includes procedures to regularly assess the contract manufacturing facility's compliance. These procedures may include, but are not limited to, review of records and manufacturing deviations and defects, and periodic audits.

For shared manufacturing arrangements, each manufacturer must submit a separate biologics license application (BLA) describing the manufacturing facilities and operations applicable to the preparation of that manufacturer's biological substance or product (21 CFR 601.2(a)). In the guidance, we state that we expect the manufacturer that prepares (or is responsible for the preparation of) the product in final form for commercial distribution to assume primary responsibility for providing data demonstrating the safety, purity, and potency of the final product. We also state that we expect the licensed finished product manufacturer to be primarily responsible for any post-approval obligations, such as postmarketing clinical trials, additional product stability studies, complaint handling, recalls, postmarket reporting of the dissemination of advertising and promotional labeling materials as required under § 601.12(f)(4) and adverse experience reporting. We recommend that the final product manufacturer establish a procedure with the other participating manufacturer(s) to obtain information in these areas.

Description of Respondents: The recordkeeping and reporting recommendations described in this document affect the participating licensed manufacturer(s), final product manufacturer(s), and contract manufacturer(s) associated with cooperative manufacturing arrangements.

Burden Estimate

We believe that the information collection provisions in the guidance do not create a new burden for respondents. We believe the reporting and recordkeeping provisions are part of usual and customary business practices. Licensed manufacturers would have contractual agreements with participating licensed manufacturers, final product manufacturers, and contract manufacturers, as applicable for the type of cooperative manufacturing arrangement, to address all these information collection provisions.

The guidance also refers to previously approved collections of information found in FDA regulations at parts 201, 207, 211, 600, 601, 606, 607, 610, 660,

801, 803, and 807, 809, and 820 (21 CFR parts 201, 207, 211, 600, 601, 606, 607, 610, 660, 801, 803, 807, 809, and 820). The collections of information in §§ 606.121, 606.122, and 610.40 have been approved under OMB Control No. 0910–0116; § 610.2 has been approved under OMB Control No. 0910–0206; §§ 600.12(e) and 600.80 have been approved under OMB Control No. 0910–0308; §§ 601.2(a), 601.12, 610.60 through 610.65, 610.67, 660.2(c), 660.28(a) and (b), 660.35(a), 660.35(c) through (g), 660.35(i) through (m), 660.45, and 660.55(a) and (b) have been approved under OMB Control No. 0910–0338; §§ 803.20, 803.50, and 803.53 have been approved under OMB Control No. 0910–0437; and §§ 600.14 and 606.171 have been approved under OMB Control No. 0910–0458. The current good manufacturing practice regulations for finished pharmaceuticals (part 211) have been approved under OMB Control No. 0910–0139; §§ 820.181 and 820.184 have been approved under OMB Control No. 0910–0073; the establishment registration regulations (parts 207, 607, and 807) have been approved under OMB Control Nos. 0910–0045, 0910–0052, and 0910–0387; and the labeling regulations (parts 201, 801, and 809) have been approved under OMB Control Nos. 0910–0537, 0910–0572, and 0910–0485.

Dated: February 25, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6055 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0109]

Exchange of Letters Between Dr. Murray M. Lumpkin, Deputy Commissioner, International Programs, Food and Drug Administration and Mr. Martin Heraghty, Assistant Secretary General, Department of Agriculture, Fisheries and Food of Ireland Concerning Certification Requirements for Caseins, Caseinates, and Mixtures Thereof Exported From Ireland to the United States

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of exchange of letters between Dr. Murray M. Lumpkin, Deputy Commissioner, International and Special Programs, FDA and Mr. Martin Heraghty, Assistant Secretary General, Department of Agriculture, Fisheries and Food (DAFF), concerning certification requirements for caseins, caseinates, and mixtures thereof exported from Ireland to the United States.

The mutual goals of FDA and DAFF in establishing certification requirements for caseins, caseinates, and mixtures thereof exported from Ireland to the United States are to assure that contaminated products will not be imported into the United States and to minimize the need for extensive FDA audit sampling of these products from Ireland. DAFF and FDA have a history of cooperation on this issue and it is, therefore, desirable that the two Agencies continue to cooperate to maintain and improve consumer protection.

DATES: The agreement became effective November 10, 2010.

FOR FURTHER INFORMATION CONTACT: David P. Kelly, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 3404, Silver Spring, MD 20993–0002, 301–796–8373, *Fax:* 301–595–7941.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and understandings between FDA and others shall be published in the **Federal Register**, the Agency is publishing notice of this agreement.

Dated: March 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration
Silver Spring, Maryland 20903

NOV 10 2010

Martin Heraghty
Assistant Secretary General
Department of Agriculture, Fisheries and Food
Agriculture House
Kildare Street
Dublin 2
Ireland

Dear Mr. Heraghty:

It is with great pleasure that I express to you the intention of the United States Food and Drug Administration (FDA) to cooperate with the Department of Agriculture, Fisheries and Food (DAFF) of Ireland concerning certification requirements for caseins, caseinates, and mixtures thereof exported from Ireland to the United States.

The mutual goals of FDA and DAFF in establishing certification requirements for caseins, caseinates, and mixtures thereof exported from Ireland to the United States are to assure that contaminated products will not be imported into the U.S. and to minimize the need for extensive FDA audit sampling of these products from Ireland. FDA and DAFF have a history of cooperation on this issue and it is, therefore, desirable that the two agencies continue to cooperate to maintain and improve consumer protection.

FDA understands that DAFF intends to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Federal Food, Drug, and Cosmetic Act of the United States and the Public Health Service Act of the United States. DAFF will inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof, FDA understands that DAFF intends to:

1. Ensure each lot[1], as defined by the manufacturer has been analyzed to assure that it is Salmonella-negative[2] and phosphatase-negative[3].

2. Require that all of the information that is required by the Federal Food, Drug, and Cosmetic Act of the United States and the Fair Packaging and Labeling Act of the United States be included on the label and labeling of individual products.

3. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption.

FDA is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that foods entering the United States meet the same standards as domestic products.

To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof, FDA intends to:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by DAFF to ensure that the products exported from Ireland and offered for import into the United States comply with the requirements of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.

2. Share any information obtained through its audit sampling with DAFF and the first Secretary of the Embassy of Ireland in Washington.

3. Promptly notify DAFF and the First Secretary of the Embassy of Ireland in Washington of the detention of any caseins, caseinates, and mixtures thereof.

4. Share expertise and provide consultative assistance to DAFF when necessary to assure the safety of the caseins, caseinates, and mixtures thereof exported to the United States.

This letter is not intended to create obligations under international or other law, and all cooperation is subject to the availability of appropriated funds, personnel, and other resources. FDA and DAFF each intend to bear their own expenses associated with this cooperation. Either FDA or DAFF may terminate this cooperation on thirty (30) calendar days' written notice to the other. The cooperation will continue for a period of five (5) years from the last date of signature of this document and may be extended for additional five (5) year periods upon consent of FDA and DAFF. This cooperation supersedes the letters between FDA and DAFF regarding this same subject matter dated June 28 and 29, 2007.

I look forward to receipt of your affirmative reply.

Sincerely,

Murray M. Lumpkin, M.D., M.Sc.
Deputy Commissioner
International Programs
United States Food and Drug Administration

1. LOT: A lot is a quantity of casein, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding one (1) week. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins, caseinates, or mixtures thereof intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

2. SALMONELLA-NEGATIVE: The absence of Salmonella in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from bags in the same lot of product immediately before closing and tested using the procedures contained in the current edition of the "Bacteriological Analytical Manual." The Bacteriological Analytical Manual can be accessed at: http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/default.htm.

3. PHOSPHATASE-NEGATIVE: The absence of phosphatase activity in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from bags in the same lot of product immediately before closing and tested using the method contained in the current edition of the "Official Methods of Analysis." This method may be obtained from the AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877 USA, telephone +1 301-924-7077, fax +1 301-924-7089, email aoac@aoac.org, and website www.aoac.org.

Department of
Agriculture,
Fisheries and Food
An Roinn
Talmhaíochta,
Iascaigh agus Bia

4 November 2010

Murray M. Lumpkin, M.D., M.Sc.
Deputy Commissioner
International Programs
United States Food and Drug Administration

Dear Deputy Commissioner Lumpkin:

It is with great pleasure that I express to you the intention of the Department of Agriculture, Fisheries and Food (DAFF) of Ireland to cooperate with the United States Food and Drug Administration (FDA) concerning certification requirements for caseins, caseinates, and mixtures thereof exported from Ireland to the United States.

The mutual goals of DAFF and FDA in establishing certification requirements for caseins, caseinates, and mixtures thereof exported from Ireland to the United States are to assure that contaminated products will not be imported into the U.S. and to minimize the need for extensive FDA audit sampling of these products from Ireland. DAFF and FDA have a history of cooperation on this issue and it is, therefore, desirable that the two agencies continue to cooperate to maintain and improve consumer protection.

DAFF intends to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Federal Food, Drug, and Cosmetic Act of the United States and the Public Health Service Act of the United States. DAFF will inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof, DAFF intends to:

1. Ensure each lot[1], as defined by the manufacturer has been analyzed to assure that it is Salmonella-negative[2] and phosphatase-negative[3].

2. Require that all of the information that is required by the Federal Food, Drug, and Cosmetic Act of the United States and the Fair Packaging and Labeling Act of the United States be included on the label and labeling of individual products.
3. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption.

FDA is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that foods entering the United States meet the same standards as domestic products.

Department of Agriculture, Fisheries and Food
An Roinn Talmhaíochta, Iascaigh agus Bia

Agriculture House
Kildare Street
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Áras Talmhaíochta
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Telephone +353 (0)1 607 2000
Fax +353 (0)1 661 6263
info@agriculture.gov.ie
www.agriculture.gov.ie

To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof, FDA intends to:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by DAFF to ensure that the products exported from Ireland and offered for import into the United States comply with the requirements of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.

2. Share any information obtained through its audit sampling with DAFF and the first Secretary of the Embassy of Ireland in Washington.

3. Promptly notify DAFF and the First Secretary of the Embassy of Ireland in Washington of the detention of any caseins, caseinates, and mixtures thereof.

4. Share expertise and provide consultative assistance to DAFF when necessary to assure the safety of the caseins, caseinates, and mixtures thereof exported to the United States.

This letter is not intended to create obligations under international or other law, and all cooperation is subject to the availability of appropriated funds, personnel, and other resources. DAFF and FDA each intend to bear their own expenses associated with this cooperation. Either DAFF or FDA may terminate this cooperation on thirty (30) calendar days' written notice to the other. The cooperation will continue for a period of five (5) years from the last date of signature of this document and may be extended for additional five (5) year periods upon consent of DAFF and FDA. This cooperation supersedes the letters between DAFF and FDA regarding this same subject matter dated June 28 and 29, 2007

I look forward to receipt of your affirmative reply.

Sincerely,

Martin Heraghty,
Assistant Secretary General,
Department of Agriculture, Fisheries & Food
Ireland.

1. LOT: A lot is a quantity of casein, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding one (1) week. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins, caseinates, or mixtures thereof intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

2. SALMONELLA-NEGATIVE: The absence of *Salmonella* in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from bags in the same lot of product immediately before closing and tested using the procedures contained in the current edition of the "Bacteriological Analytical Manual." The Bacteriological Analytical Manual can be accessed at http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/default.htm.

3. PHOSPHATASE-NEGATIVE: The absence of phosphatase activity in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from bags in the same lot of product immediately before closing and tested using the method contained in the current edition of the "Official Methods of Analysis." This method may be obtained from the AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877 USA, telephone +1 301-924-7077, fax +1 301-924-7089, email aoac@aoac.org and website www.aoac.org.

[FR Doc. 2011–6079 Filed 3–15–11; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Risk Mitigation Strategies To Address Potential Procoagulant Activity in Immune Globulin Intravenous Products; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), in cooperation with the National Heart, Lung, and Blood Institute, and the Plasma Protein Therapeutics Association, are jointly cosponsoring a public workshop on risk mitigation strategies to address procoagulant activity that may be present in some Immune Globulin Intravenous (IGIV) products. The purposes of the public workshop are to identify the most likely causes of IGIV-associated thrombotic events, to determine which procoagulant proteins may be causative, and to identify relevant, feasible tests that could be used to assess levels and/or activity of these proteins in IGIV products. The public workshop will feature presentations by national and international experts from government, academic institutions, and industry.

Dates and Time: The public workshop will be held on May 17, 2011, from 8:30 a.m. to 5 p.m. and May 18, 2011, from 8 a.m. to 11:30 a.m.

Location: The public workshop will be held at the Universities at Shady Grove Conference Center, Building II, Multipurpose Room, 9630 Gudelsky Dr., Rockville, MD 20850. Please visit *http://www.shadygrove.umd.edu/about/visit* for directions, visitor parking, and public transportation information.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov.*

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by April 26, 2011. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The following topics will be discussed at the public workshop: (1) Epidemiology of thrombotic events in IGIV recipients; (2) pathophysiology of arterial and venous thrombosis in this context; (3) research to identify specific procoagulant proteins that can co-purify with IGIV; (4) partitioning of coagulation factors during IGIV purification; (5) the role of activated Coagulation Factor XIa in IGIV-associated thrombosis; (6) test methods for screening IGIV products; (7) ancillary animal models; and (8) standards development for thrombin generation tests. On the first day of the public workshop, the epidemiology and potential causes of historically observed IGIV-associated thrombotic adverse events, as well as biochemical identification of procoagulant proteins that co-purify with IGIV will be discussed. In addition, methods and relevance of both broad and specific tests to screen IGIV products for procoagulant activity will be addressed, and limitations in test methodologies and validation needs will be identified. On the second day of the public workshop, preliminary results of IGIV product testing for procoagulant activity will be presented and discussed, followed by a summary of the meeting.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.*

Dated: March 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6084 Filed 3–15–11; 8:45 am]
BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Allergenic 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: Allergenic 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 May 12, 2011, from 8 a.m. to approximately 3:30 p.m.

Location: Bethesda Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814, Grand Ballroom.

Contact Person: Gail Dapolito or Jane Brown, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20853, 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 May 12, 2011, in open session, the committee will receive updates and have discussion on the following topics: (1) Structure and Activities of the Laboratory of Immunobiochemistry (the Laboratory), Division of Bacterial, Parasitic, and Allergenic Products, Center for Biologics Evaluation and Research, FDA; (2) enzyme-linked immunosorbent assay replacement of radial immunodiffusion assays for potency determinations of cat and ragweed pollen allergen extracts by the Laboratory; (3) statistical considerations for the design and interpretation of phase III clinical trials of allergenic products; (4) environmental exposure chambers for phase III studies of allergenic products, and (5) International Organization for Standardization (ISO) 17025 accreditation of the Laboratory.

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 May 12, 2011, from 8 a.m. to approximately 3 p.m., the 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 May 5, 2011. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 27, 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 April 28, 2011.

Closed Committee Deliberations: On May 12, 2011, from approximately 3 p.m. to 3:30 p.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 a report of 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 Gail Dapolito 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 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6083 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. FDA–2011–N–0002]

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Microbiology Devices Panel of the Medical Devices 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 June 29, 2011, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1613, Silver Spring, MD 20993–0002, 301–796–6639, 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 June 29, 2011, the committee will discuss and make recommendations regarding the possible reclassification of molecular diagnostics for the rapid detection of *Mycobacterium tuberculosis* complex and the detection of genetic mutations which confer antibiotic resistance in *M. tuberculosis* complex. Discussion would include the appropriate information and acceptable performance characteristics that would be required to assess the safety and effectiveness of rapid diagnostic tests for *M. tuberculosis* complex, and whether these can be sufficiently specified to support possible reclassification.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 20, 2011. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. on June 29, 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 June 9, 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 June 10, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Committee Management Staff, 301–796–5966, 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 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6081 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices 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 27, 2011, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Margaret McCabe-Janicki, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993, 301–796–7029, 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 April 27, 2011, the committee will discuss, make recommendations, and vote on information related to the premarket approval application supplement for RESTYLANE, sponsored by Medicis Aesthetics, Inc. RESTYLANE is currently approved for mid- to deep-dermal implantation for the correction of moderate to severe facial wrinkles and folds, such as nasolabial folds. The sponsor is requesting an expanded indication, to include use of RESTYLANE for augmentation of the lips.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 19, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on the meeting day. 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 April 8, 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 April 12, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–796–5966, 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 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6080 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Blood 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). The meeting will be open to the public.

Name of Committee: Blood 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 28, 2011, from 8:30 a.m. to 5 p.m. and April 29, 2011, from 8 a.m. to 1 p.m.

Location: Hilton Washington DC/North, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Bryan Emery or Rosanna Harvey, Food and Drug Administration (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1277 or 301–827–1297, 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 April 28, 2011, in the morning, the committee will discuss testing donations of Source Plasma for hepatitis B virus infection by nucleic acid testing. In the afternoon, the committee will discuss current considerations on use of plasma obtained from Whole Blood donors for further manufacturing. On April 29, 2011, in the morning, the committee will discuss blood donor written statement of understanding. In the afternoon, the Committee will hear an update from the Department of Health and Human Services' Office of the Assistant Secretary for Health and an update on public workshops FDA is considering sponsoring on thrombotic adverse events associated with Immune Globulin Intravenous, toxicities of Hydroxyethyl Starch Solutions, and measurement of hemoglobin in blood donors.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 13, 2011. Oral presentations from the public will be scheduled between approximately 11 a.m. and 11:30 a.m. and between 3:30 p.m. and 4 p.m. on April 28, 2011, and between approximately 10:30 a.m. and 11 p.m. on April 29, 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 April 5, 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 April 6, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery 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 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6085 Filed 3–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

"Low Income Levels" Used for Various Health Professions and Nursing Programs Included in Titles III, VII and VIII of the Public Health Service Act

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low-income family" for the purpose of determining eligibility for programs that provide health professions and nursing training for individuals from disadvantaged backgrounds. These various programs are included in Titles III, VII and VIII of the Public Health Service Act.

The Department periodically publishes in the **Federal Register** low-income levels used to determine eligibility for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from disadvantaged backgrounds, or (3) individuals from "low-income" families.

SUPPLEMENTARY INFORMATION: The various health professions and nursing grant and cooperative agreement programs that use the low-income levels to determine whether an individual is from an economically disadvantaged background in making eligibility and funding determinations generally make awards to: Accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health podiatric medicine, nursing, chiropractic, public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or education entities to assist the disadvantaged to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for disadvantaged students.

Low-Income Levels

The Secretary defines a "low-income family" for programs included in Titles III, VII and VIII of the Public Health Service Act as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. A family is a group of two or more individuals related by birth, marriage, or adoption who live together or an individual who is not living with any relatives. Most HRSA programs use the income of the student's parents to compute low-income status, while a few programs, depending upon the legislative intent of the program, programmatic purpose of the low-income level, as well as the age and circumstances of the participant, will use the student's family as long as he or she is not listed as a dependent on the parents' tax form. Each program will announce the rationale and choice of methodology for determining low-income levels in their program guidance. The Department's poverty guidelines are based on poverty thresholds published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index.

The Secretary annually adjusts the low-income levels based on the Department's poverty guidelines and makes them available to persons responsible for administering the applicable programs. The income figures below have been updated to reflect increases in the Consumer Price Index through December 31, 2010.

2011 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of parents' family *	Income level **
1	$21,780
2	29,420
3	37,060
4	44,700
5	52,340
6	59,980
7	67,620
8	75,260

For families with more than 8 persons, add $3,820 for each additional person.

2011 POVERTY GUIDELINES FOR ALASKA

Size of parents' family *	Income level **
1	$27,200
2	36,760
3	46,320
4	55,880
5	65,440
6	75,000
7	84,560
8	94,120

For families with more than 8 persons, add $4,780 for each additional peron.

2011 POVERTY GUIDELINES FOR HAWAII

Size of parents' family *	Income Level **
1	$25,080
2	33,860
3	42,640
4	51,420
5	60,200
6	68,980
7	77,760
8	86,540

For families with more than 8 persons, add $4,390 for each additional person.

* Includes only dependents listed on Federal income tax forms. Some programs will use the student's family rather than his or her parents' family.

** Adjusted gross income for calendar year 2010.

Separate poverty guidelines figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (*Note* that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. Puerto Rico or other outlying jurisdictions shall use income guidelines for the 48 Contiguous States and the District of Columbia.

Dated: March 10, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–6110 Filed 3–15–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: Pursuant to 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), this will serve to notify the public that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to intellectual property broker ICAP Ocean Tomo to promote the utilization by the public of the inventions described in the following U.S. patents: 7,122,624

entitled "PH2 Receptor Ligands" (HHS Ref. No. E–123–1999/0), and 7,087,736 entitled "Tyrosine DNA phosphodiesterases (TDP) and related polypeptides, nucleic acids, vectors, TDP producing host cells, antibodies and methods of use" (HHS Ref. No. E–281–1999/0). The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be for the use of the Licensed Patent Rights in developing biopharmaceutical products.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before March 31, 2011 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Mojdeh Bahar, J.D., Chief, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–2950; Facsimile: (301) 402–0220; E-mail: *baharm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Prior to March 31, 2011, with NIH's explicit prior consent, ICAP will advertise the availability of the NIH technologies for licensing. Bidders may bid at anytime. Before any bid is accepted, NIH will review the commercial development plan (CDP) and assess the suitability of the bidder as a licensee.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within fifteen(15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 9, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–6124 Filed 3–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(i)(VIII) of the INA, 8 U.S.C. 1182(a)(3)(B)(i)(VIII), shall not apply, with respect to an alien, who received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) under duress from, or on behalf of, a terrorist organization as described in subsection 212(a)(3)(B)(vi), 8 U.S.C. 1182(a)(3)(B)(vi), provided that the alien satisfies the relevant agency authority that the alien:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed all relevant background and security checks;

(c) Has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each instance of military-type training and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) Has not received training that itself poses a risk to the United States or United States interests (*e.g.,* training on production or use of a weapon of mass destruction, as defined by 18 U.S.C. Section 2332a(c)(2), torture, or espionage);

(e) Poses no danger to the safety and security of the United States; and

(f) Warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

When determining whether the military-type training was received under duress, the following factors, among others, may be considered: Whether the applicant reasonably could have avoided, or took steps to avoid, receiving military-type training, including whether the applicant left or escaped the training at the earliest opportunity, if one presented itself; the severity and type of harm inflicted or threatened and to whom the harm was directed; and the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

When considering the totality of the circumstances, factors to be considered, in addition to the duress-related factors stated above, may include, among others: The length and nature of the military-type training provided; the nature of the activities committed by the terrorist organization; the alien's awareness of those activities; the alien's conduct since the time of the military-type training; and any other relevant factor.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection applications, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case

decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: January 7, 2011.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2011–6121 Filed 3–15–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that subsections 212(a)(3)(B)(iv)(IV) and 212(a)(3)(B)(iv)(V) of the INA, 8 U.S.C. 1182(a)(3)(B)(iv)(IV) and 1182(a)(3)(B)(iv)(V), shall not apply, with respect to an alien, for solicitation of funds or other things of value for a terrorist organization described in subsection 212(a)(3)(B)(vi), 8 U.S.C. 1182(a)(3)(B)(vi), under duress, or for solicitation of any individual for membership in a terrorist organization described in subsection 212(a)(3)(B)(vi), 8 U.S.C. 1182(a)(3)(B)(vi), under duress, provided that the alien satisfies the relevant agency authority that the alien:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed all relevant background and security checks;

(c) Has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each instance of solicitation and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) Poses no danger to the safety and security of the United States; and

(e) Warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

When determining whether the solicitation was provided under duress, the following factors, among others, may be considered: Whether the applicant reasonably could have avoided, or took steps to avoid, soliciting; the severity and type of harm inflicted or threatened and to whom the harm was directed; and the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

When considering the totality of the circumstances, factors to be considered, in addition to the duress-related factors stated above, may include, among others: The amount, type, and frequency of solicitation provided; the nature of the activities committed by the terrorist organization; the alien's awareness of those activities; the length of time since the solicitation was provided; the alien's conduct since that time; and any other relevant factor.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection applications, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: January 7, 2011.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2011–6122 Filed 3–15–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–212; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal; OMB Control No. 1615–0018.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 16, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–212. Should USCIS decide to revise Form I–212 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–212.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated

response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer,20 Massachusetts Avenue NW., Room 5012, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0018 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–212; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information provided on Form I–212 is used by USCIS to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,272 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,544 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: March 10, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–6143 Filed 3–15–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–23]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Federal Housing Administration (FHA): Home Energy Retrofit Loan Pilot Program; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: March 30, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Ross_A._Rutledge@omb.eop.gov* ; fax: 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, QDAM, Department of Housing and Urban Development, 4517th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from the Reports Management Officer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to implementing an FHA Energy Efficient Mortgage Innovation pilot program targeted to the single family housing market. The Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009, 123 Stat. 3034) (2010 Appropriations Act), which appropriated fiscal year 2010 funds for HUD, among other agencies, appropriated $50 million for an Energy Innovation Fund to enable HUD to catalyze innovations in the residential energy efficiency sector that have the promise of replicability and help create a standardized home energy efficient retrofit market. Of the $50 million appropriated for the Energy Innovation Fund, the 2010 Appropriations Act stated that "$25,000,000 shall be for the Energy Efficient Mortgage Innovation pilot program directed at the single family housing market." (*See* Pub. L. 111–117, at 123 Stat. 3089). The FHA Home Energy Retrofit Loan Pilot Program (Retrofit Pilot Program) is designed by HUD to meet this statutory directive and provides funding to support that effort. Under the Retrofit Pilot Program, HUD, through FHA-approved lenders, will insure loans for homeowners who are seeking to make energy improvements to their homes.

Lender participation in the Retrofit Pilot Program is voluntary. To facilitate HUD's monitoring of lender use of incentive payments funds, lenders will be required to enter into a pilot program agreement with HUD, to report to HUD on their use of incentive payments funds.

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: Federal Housing Administration (FHA): Home Energy Retrofit Loan Pilot Program.

Description of Information Collection: Lender reporting requirements under the Retrofit Pilot Program.

OMB Control Number: 2502–0596.

Agency Form Numbers: None.

Members of Affected Public: FHA-approved lenders.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 320, number of respondents is 20 frequency response is annually, and the estimated number of hours per response is 16.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 09, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–6064 Filed 3–15–11; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5489–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors (AAFs), Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustment to monthly rentals for units covered by the contract. This Notice announces revised Contract Rent AAFs for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using residential rent and utility cost changes from the most current annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this Notice. HUD will publish "Renewal Funding AAFs," in a separate Notice, to be used exclusively for renewal funding of tenant-based rental assistance, if so required in the fiscal year (FY) 2011 HUD Budget.

DATES: Effective Date: March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Contact Danielle Bastarache, Director, Housing Voucher Management, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, 202–708–1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (non Single Room Occupancy); Ann Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–708–4300, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202–708–3000, for questions relating to all other Section 8 programs; and Marie L. Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–708–0590, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for the above persons: Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Tables showing Contract Rent AAFs will be available electronically from the HUD data information page at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_CR_tables.pdf.*

I. Applying Contract Rent AAFs to Various Section 8 Programs

Contract Rent AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (*i.e.,* pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of Section 8 programs that use the Contract Rent AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-Based Certificate (PBC) program.

Each Section 8 program category uses the Contract Rent AAFs differently. The specific application of the Contract Rent AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. With the exception of the Project-Based Certificate program, Contract Rent AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable State-by-State operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-Based Rents. Contract Rent AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the Contract Rent AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Certificate Program. In the past, Contract Rent AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted

to the Housing Choice Voucher Program, which does not use Contract Rent AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use Contract Rent AAFs to adjust contract rent for outstanding HAP contracts.

Voucher Program. Contract Rent AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

Moderate Rehabilitation Program. Under the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the Contract Rent AAF to the base rent component of the contract rent, not the full contract rent.

II. Adjustment Procedures

This section of the Notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002–10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97–57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published Contract Rent AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published Contract Rent AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 Contract Rent AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 Contract Rent AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.,* unless the contract rent is reduced by comparability):

- The Table 1 Contract Rent AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 Contract Rent AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).). Rents are adjusted by applying the full amount of the applicable AAF under this Notice.

The applicable Contract Rent AAF is determined as follows:

- The Table 1 Contract Rent AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 Contract Rent AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

- The Table 2 Contract Rent AAF is always used. The Table 1 Contract Rent AAF is not used.
- The Table 2 Contract Rent AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 Contract Rent AAF, the comparable rent level will be the new rent to owner.
- The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the Contract Rent AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that "the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less * * *." Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994). The Congressional Record also states the following:

> Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants section 8 projects and under the Certificate program, HUD should expect to benefit from this "tenure discount." Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate Contract Rent AAF Tables, Tables 1 and 2. The difference between Table 1 and Table 2 is that each Contract Rent AAF in Table 2 is 0.01 less than the corresponding Contract Rent AAF in Table 1. Where a Contract Rent AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding Contract Rent AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

Tables 1 and 2 that show Contract Rent AAFs are posted on the HUD User Web site at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_CR_tables.pdf.* There are two columns in each table. The first column is used to adjust contract rent for rental units where the highest cost utility is

included in the contract rent, *i.e.,* where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.,* where the tenant pays for the highest cost utility.

The applicable Contract Rent AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the Contract Rent AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the Contract Rent AAF from the column for "highest cost included." If highest cost utility is not included, select the Contract Rent AAF from the column for "utility excluded."

V. Methodology

Contract Rent AAFs are rent inflation factors. Two types of rent inflation factors are calculated for Contract Rent AAFs: gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not include any change in the cost of utilities. The gross rent inflation factor is designated as "Highest Cost Utility Included" and the shelter rent inflation factor is designated as "Highest Cost Utility Excluded".

Contract Rent AAFs are calculated using CPI data on "rent of primary residence" and "fuels and utilities".[1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the "contract rent" which includes units with all utilities included in the rent, units with some utilities included in the rent and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying the percentage of renters who pay for heat (a proxy for the percentage renters who pay shelter rent) from the Consumer Expenditure Survey (CEX) and American Community Survey (ACS) data on the ratio of utilities to rents.[2]

Survey Data Used to Produce Contract Rent AAFs

In this publication, the rent and fuel and utilities inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2008 to 2009. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2008 CEX survey data produced for HUD for the purpose of computing Contract Rent AAFs. The utility-to-rent ratio used to produce Contract Rent AAFs comes from 2008 ACS median rent and utility costs.

Geographic Areas

Contract Rent AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the Contract Rent AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called "HUD Metro FMR Area" (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors.[3] For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables, by State and each HMFA is listed alphabetically within its respective CBSA. Each Contract Rent AAF applies to a specified geographic area and to units of all bedroom sizes. Contract Rent AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey.

The Contract Rent AAFs shown at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_CR_tables.pdf* use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2011 FMRs.

Area Definitions

To make certain that they are using the correct Contract Rent AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_AreaDef.pdf.* For units located in metropolitan areas with a local CPI survey, Contract Rent AAF areas are listed separately. For units located in areas without a local CPI survey, the metropolitan or nonmetropolitan counties receive the regional CPI for that Census Region.

The Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_AreaDef.pdf* lists areas in alphabetical order by State. The associated CPI region is shown next to each State name. Areas whose Contract Rent AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate Contract Rent AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed in the Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_AreaDef.pdf.*

Puerto Rico and the Virgin Islands use the South Region Contract Rent AAFs. All areas in Hawaii use the Contract Rent AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region Contract Rent AAFs.

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Contract Rent AAF Tables posted at *http://www.huduser.org/portal/datasets/aaf.html/FY2011_CR_tables.pdf.*

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *http://www.HUDUSER.org.*

[3] There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the geography underlying its survey for new OMB metropolitan area definitions and these counties, are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet the 75 percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.

Dated: March 7, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–6065 Filed 3–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Environmental Assessment for the Proposed Restoration of a Portion of Lower Hobble Creek

AGENCY: Central Utah Project Completion Act Completion Office, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, the Central Utah Water Conservancy District, and the Utah Reclamation Mitigation and Conservation Commission, as joint leads, are initiating an Environmental Assessment of the impacts associated with the proposed restoration of the eastern portion of Lower Hobble Creek, near Springville, Utah. This restoration effort is intended to facilitate the recovery of the June Sucker (Chasmistes liorus), a Federally listed endangered species, through improvement of spawning habitat and maintenance of stream flow. It is anticipated that the resultant effort would include the possible restoration of approximately 2 miles of stream channel, potential modification or removal of several existing barriers to fish passage, and enhancement of the existing water supply.

DATES: Date and location for public scoping will be announced locally.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Lee Baxter at (801) 379–1174, or by e-mail at *lbaxter@usbr.gov.*

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2011–6090 Filed 3–15–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N051;80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before April 15, 2011.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (*telephone:* 916–414–6464; *fax:* 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; *see* **ADDRESSES** (*telephone:* 760–431–9440; *fax:* 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. 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.

Permit No. TE–815214

Applicant: Oceano Dunes State Vehicular Recreation Area, Arroyo Grande, California.

The applicant requests an amendment to an existing permit (February 13, 2008, 73 FR 8344) to take (set up and use remote sensing cameras to document and identify predation) the California least tern (*Sterna antillarumbrowni*) in conjunction with population monitoring and predator management activities in San Luis Obispo and Santa Barbara Counties, California, for the purpose of enhancing their survival.

Permit No. TE–33863A

Applicant: Deborah K. Blackburn, Austin, Texas.

The applicant requests apermitto take (harass by survey) the southwestern willow flycatcher (*Empidonaxtrailliiextimus*) in conjunction with surveys and population monitoring activities throughout the range of the species in California and Nevada for the purpose of enhancing its survival.

Permit No. TE–064431

Applicant: Aztec Engineering Group Inc., Phoenix, Arizona.

The applicant requests an amendment to an existing permit (February 10, 2011, 76 FR 7577) to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonaxtrailliiextimus*), and take (harass by survey) the Yuma clapper rail (*Ralluslongirostrisyumanensis*) in conjunction with surveys and population monitoring activities throughout the range of each species in California and Nevada for the purpose of enhancing their survival.

Permit No. TE–027422

Applicant: Brian T. Pittman, Petaluma, California.

The applicant requests an amendment to an existing permit (June 20, 2000, 65 FR 38297) to take (harass by survey, capture, handle, measure, and release) the arroyo toad (*Anaxyruscalifornicus*), and take (harass by survey, capture, handle, mark, collect biological samples, collect voucher specimens) the California tiger salamander (*Ambystomacaliforniense*) in conjunction with surveys, genetic study,and population monitoring activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–213726

Applicant: Joelle J. Fournier, San Diego, California.

The applicant requests an amendment to an existing permit (May 3, 2010, 75 FR 23287) to take (harass by survey, trap, capture, band adults, erect fence, use cameras, handle, transport sick and injured chicks and adults, and collect and transport abandoned eggs) the California least tern (*Sterna antillarumbrowni*) in conjunction with surveys, population monitoring and rehabilitation activities at Camp Pendleton Marine Base, Naval Amphibious Base Coronado, Naval Air

Station North Island, and Silver Strand Training Complex South in San Diego County, California, for the purpose of enhancing its survival.

Permit No. TE–34570A

Applicant: San Francisco Bird Observatory, Milpitas, California.

The applicant requests a permit to take (harass by survey, monitor nests, and use cameras) the California least tern (*Sterna antillarumbrowni*) in conjunction with surveysand population monitoring activities in Santa Clara, San Mateo, Alameda, and Napa Counties, California, for the purpose of enhancing its survival.

Permit No. TE–172638

Applicant: Kevin S. Livergood, Foothill Ranch, California.

The applicant requests an amendment to an existing permit, which we granted March 6, 2008, for a Federally threatened species. The original permit allowed the applicant to take (harass by survey) the coastal California gnatcatcher (*Polioptila californica californica*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing its survival. The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinectaconservatio*), the longhorn fairy shrimp (*Branchinectalongiantenna*), the Riverside fairy shrimp (*Streptocephaluswoottoni*), the San Diego fairy shrimp (Branchinectasandiegonensis), and the vernal pool tadpole shrimp (*Lepiduruspackardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–817400

Applicant: East Bay Regional Park District, Oakland, California.

The applicant requests an amendment to an existing permit (April 22, 2008, 73 FR 21645) to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinectaconservatio*), the longhorn fairy shrimp (*Branchinectalongiantenna*), and the vernal pool tadpole shrimp (*Lepiduruspackardi*) in conjunction with survey activities in Alameda and Contra Costa Counties, California, for the purpose of enhancing their survival.

Permit No. TE–795930

Applicant: Map Associates, Chico, California.

The applicant requests an amendment to an existing permit (April 21, 2010, 75 FR 20857) to take (collect soil containing Federally listed fairy shrimp cysts, translocate, and inoculate cysts into restored vernal pools) the vernal pool tadpole shrimp (*Lepiduruspackardi*) in conjunction with vernal pool restoration and population enhancement activities in Butte County, California, for the purpose of enhancing its survival.

Permit No. TE–35000A

Applicant: University of California, Davis, California.

The applicant requests a permit to take (survey, capture, handle, take biological samples, and release) the salt marsh harvest mouse (*Reithrodontomysraviventris*) in conjunction with ecological research and genetic studies in Solano, Napa, Sonoma, Marin, Contra Costa, Alameda, San Mateo, and San Francisco Counties, California, for the purpose of enhancing its survival.

Permit No. TE–35207A

Applicant: Jordan J. Zylstra, San Jacinto, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryasedithaquino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–104080

Applicant: Stephen A. Sykes, Rocklin, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystomacaliforniense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–35388A

Applicant: Steven M. Ritt, San Diego, California.

The applicant requests apermitto take (harass by survey) the southwestern willow flycatcher (*Empidonaxtrailliiextimus*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–35387A

Applicant: Danielle C. Glenn, Ventura, California.

The applicant requests apermit to take (harass by survey, locate, and monitor nests) the California least tern (*Sterna antillarumbrowni*) in conjunction with surveys and population monitoring activities throughout the range of the species in Ventura County, California, for the purpose of enhancing its survival.

Permit No. TE–039640

Applicant: Kristopher R. Alberts, San Clemente, California.

The applicant requests an amendment to an existing permit (April 7, 2008, 73 FR 18804) to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryasedithaquino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Michael Long,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. 2011–6104 Filed 3–15–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 11, 2011. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 31, 2011.

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.

Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

San Francisco County

Waybur, Julian, House, 3232 Pacific Ave, San Francisco, 11000143

Santa Clara County

Seven Springs Ranch, 11801 Dorothy Anne Way, Cupertino, 11000146

FLORIDA

Orange County

Church of the Good Shepherd, 331 Lake Ave, Maitland, 11000144

St. Johns County

Nelmar Terrace Historic District, Alfred St, San Carlos Ave, San Marcos Ave, Hospital Creek, St. Augustine, 11000145

KENTUCKY

Jessamine County

Crockett, Joseph, House Union Mills Pike, Nicholasville, 83004587

MASSACHUSETTS

Essex County

East Parish Meeting House, 267 Middle Rd, Haverhill, 11000149

NEBRASKA

Cheyenne County

Woodsshire Residential Historic District, Bounded by High and Calvert Sts, South 17th to South 20th Sts, Lincoln, 11000147

Douglas County

Farm Credit Building, 206 S 19th St, ≤ Omaha, 11000148

NORTH CAROLINA

Guilford County

Mock, Judson, Voehringer Company Hosiery Mill, 2610 Oakland Ave, Greensboro, 11000141

NORTH DAKOTA

McHenry County

Lower Souris National Wildlife Refuge Airplane Hangar, 681 Salyer Rd, Upham, 11000140

TENNESSEE

Sullivan County

East Hill Cemetery, East State Street at Georgia Ave, Bristol, 11000142

OTHER ACTIONS: Request for REMOVAL has been made for the following resource:

NORTH DAKOTA

Stutsman

Cecil Baker Round Barn, ND 38, Kensal, 86002759

[FR Doc. 2011–6047 Filed 3–15–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 19, 2011. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 31, 2011.

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.

J. Paul Loether,

Chief, National Register of Historic Places/ National, Historic Landmarks Program.

ARIZONA

Maricopa County

Wickenburg, Henry, Pioneer Cemetery, Adams St, Wickenburg, 11000151

CALIFORNIA

Placer County

Auburn Public Library, (Auburn, CA MPS) 175 Almond St, Auburn, 11000153

OREGON

Washington County

Walker Naylor Historic District, Gayles Way, Covey Run Dr, A St, and 21st Ave, Forest Grove, 11000155

WASHINGTON

Yakima County

Young, Fred and Elizabeth, House, 804 S 22nd Ave, Yakima, 11000150

WISCONSIN

Barron County

St. Mary's Rectory, 1575 Second Ave, Cumberland, 11000152

OTHER ACTIONS: Request for REMOVAL has been made for the following resource.

WISCONSIN

Orange County

1890 Windermere School, 113 W Seventh Ave, Windermere, 03000509

[FR Doc. 2011–6048 Filed 3–15–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 28, 2011, a proposed Consent Decree in *United States of America et al.* v. *AK Steel Corporation, et al.,* Civil Action No. 97–1863 was lodged with the United States District Court for the Western District of Pennsylvania.

The Consent Decree resolves the United States' claims against eight parties at the Breslube Penn Superfund Site, located in Coraopolis, Moon Township, Pennsylvania. Those claims were brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607. The Consent Decree requires payments totaling $607,744 in settlement of the United States' past cost claims against the settling defendant. The Decree also requires payments totaling $790,668 in settlement of contribution claims brought by the Breslube Penn Performing Trust, which is performing the remedy at the site pursuant to a Consent Decree entered by the Court on August 31, 2009.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044–7611, and should refer to *United States of America et al.* v. *AK Steel Corporation, et al.,* Civil Action No. 97–1863 (W.D. PA), D.J. Ref. 90–11–3–1762.

The Decree may be examined at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–6053 Filed 3–15–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Revision to Notice of Lodging of Settlement Agreement Under the Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act Published on March 10, 2011

The notice previously published on March 10, 2011 is hereby revised to clarify that comments to the proposed Settlement Agreement must be received by March 25, 2011. Instructions for sending comments on the proposed Settlement Agreement and for obtaining copies of the proposed Settlement Agreement are provided in the March 10, 2011 Notice (**Federal Register**/Vol. 76, No. 47/Thursday, March 10, 2011/Notices/page 13208).

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–6045 Filed 3–15–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice on Reallotment of Workforce Investment Act (WIA) Title I Formula Allotted Funds for Dislocated Worker Activities for Program Year (PY) 2010

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Workforce Investment Act, Public Law 105–220, requires the Secretary of Labor (Secretary) to conduct reallotment of dislocated worker formula allotted funds based on State financial reports submitted as of the end of the prior PY. This notice publishes PY 2010 dislocated worker funds for recapture by State and the amount to be reallotted to eligible States.

DATES: This notice is effective March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Grace Kilbane, Administrator, U.S. Department of Labor, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC. Telephone (202) 693–3980 (this is not a toll-free number) or fax (202) 693–3981.

SUPPLEMENTARY INFORMATION: WIA Section 132(c) requires the Secretary to conduct reallotment of WIA funds for the prior program year in any case where unobligated balances exceeded twenty percent. The procedures the Secretary uses for recapture and reallotment of funds are described in WIA regulation at 20 Code of Federal Regulations Section 667.150. For PY 2009 funds, financial reports were analyzed and found zero instances for the WIA Youth and Adult programs in which unobligated balances exceeded twenty percent. For the Dislocated Worker program, however, there were two States that had unobligated PY 2009 funds in excess of 20 percent. Therefore, a total of $408,982 will be recaptured from PY 2010 funding from these two States and reallotted to the remaining States, as required by WIA Section 132(c). The description of the methodology used for the *calculation of the recapture/reallotment amounts* and the distribution of the changes to PY 2010 formula allotments for dislocated worker activities are attached.

For any State from which funds are being recaptured, WIA Section 132(c)(5) requires the governor to prescribe equitable procedures for reacquiring funds from the State and local areas.

I. Attachment A

WORKFORCE INVESTMENT ACT DISLOCATED WORKER ACTIVITIES PROGRAM YEAR (PY) 2010 REALLOTMENT TO STATES CHART

	Excess unobligated PY 2009 funds for recapture in PY 2010	PY 2009 dislocated worker allotments for eligible states	PY 2010 reallotment amount for eligible states	Total PY 2010 allotments	Total adjustment to PY 2010 (recapture/ reallotment)	Revised total PY 2010 allotments
Alabama	0	12,621,558	4,508	17,669,335	4,508	17,673,843
Alaska	0	3,392,665	1,212	2,187,095	1,212	2,188,307
Arizona*	0	16,648,405	5,947	22,788,184	5,947	22,794,131
Arkansas	0	7,192,470	2,569	6,867,051	2,569	6,869,620
California	0	212,284,647	75,829	192,413,016	75,829	192,488,845
Colorado	0	13,837,694	4,943	14,509,305	4,943	14,514,248
Connecticut	0	14,238,672	5,086	11,850,579	5,086	11,855,665
Delaware	0	1,950,897	697	2,778,921	697	2,779,618
District of Columbia	0	3,628,361	1,296	2,990,511	1,296	2,991,807
Florida	0	77,059,075	27,526	83,019,633	27,526	83,047,159
Georgia	0	41,902,519	14,968	40,912,792	14,968	40,927,760
Hawaii	0	2,067,480	739	3,268,124	739	3,268,863
Idaho	0	2,709,982	968	4,536,856	968	4,537,824

WORKFORCE INVESTMENT ACT DISLOCATED WORKER ACTIVITIES PROGRAM YEAR (PY) 2010 REALLOTMENT TO STATES CHART—Continued

	Excess unobligated PY 2009 funds for recapture in PY 2010	PY 2009 dislocated worker allotments for eligible states	PY 2010 reallotment amount for eligible states	Total PY 2010 allotments	Total adjustment to PY 2010 (recapture/ reallotment)	Revised total PY 2010 allotments
Illinois	0	65,561,923	23,419	54,673,396	23,419	54,696,815
Indiana	0	25,076,767	8,958	27,257,656	8,958	27,266,614
Iowa	0	4,999,095	1,786	5,888,367	1,786	5,890,153
Kansas	0	4,978,239	1,778	6,855,442	1,778	6,857,220
Kentucky	0	17,901,696	6,395	18,089,024	6,395	18,095,419
Louisiana	0	8,857,065	3,164	9,812,674	3,164	9,815,838
Maine	0	4,373,817	1,562	4,578,544	1,562	4,580,106
Maryland	0	10,767,103	3,846	15,543,289	3,846	15,547,135
Massachusetts	0	20,303,163	7,252	22,706,846	7,252	22,714,098
Michigan	0	75,050,239	26,808	64,544,036	26,808	64,570,844
Minnesota	0	20,054,286	7,163	18,020,939	7,163	18,028,102
Mississippi	0	13,594,096	4,856	9,867,047	4,856	9,871,903
Missouri	0	24,710,779	8,827	22,223,344	8,827	22,232,171
Montana	0	1,679,893	600	2,174,950	600	2,175,550
Nebraska	0	2,478,758	885	2,428,300	885	2,429,185
Nevada	0	13,691,153	4,891	14,124,712	4,891	14,129,603
New Hampshire	0	2,393,494	855	3,181,956	855	3,182,811
New Jersey	280,451	0	0	33,365,324	(280,451)	33,084,873
New Mexico*	0	2,832,500	1,012	4,093,214	1,012	4,094,226
New York	0	63,490,356	22,679	65,534,311	22,679	65,556,990
North Carolina	0	42,493,181	15,179	44,039,515	15,179	44,054,694
North Dakota	0	876,713	313	690,086	313	690,399
Ohio	0	55,974,110	19,994	51,610,221	19,994	51,630,215
Oklahoma	0	5,762,276	2,058	6,905,534	2,058	6,907,592
Oregon	0	16,418,257	5,865	20,167,658	5,865	20,173,523
Pennsylvania	0	40,639,918	14,517	39,561,993	14,517	39,576,510
Puerto Rico	0	28,244,122	10,089	17,054,847	10,089	17,064,936
Rhode Island	128,531	0	0	6,227,600	(128,531)	6,099,069
South Carolina	0	23,633,802	8,442	23,089,893	8,442	23,098,335
South Dakota	0	912,475	326	1,000,388	326	1,000,714
Tennessee	0	27,141,982	9,695	26,930,077	9,695	26,939,772
Texas	0	51,436,825	18,374	61,378,563	18,374	61,396,937
Utah*	0	3,383,375	1,209	4,625,970	1,209	4,627,179
Vermont	0	1,673,255	598	1,787,950	598	1,788,548
Virginia	0	13,503,287	4,823	18,472,220	4,823	18,477,043
Washington	0	21,181,897	7,566	24,271,171	7,566	24,278,737
West Virginia	0	3,424,387	1,223	4,551,211	1,223	4,552,434
Wisconsin	0	15,363,236	5,488	19,934,322	5,488	19,939,810
Wyoming	0	558,477	199	786,008	199	786,207
STATE TOTAL	$408,982	$1,144,950,422	$408,982	$1,183,840,000	$0	$1,183,840,000

* Includes Navajo Nation.

II. Attachment B

WORKFORCE INVESTMENT ACT DISLOCATED WORKER ACTIVITIES PROGRAM YEAR 2010 REVISED ALLOTMENTS WITH REALLOTMENT

	Total		
	Original	Reallotment	Revised
Alabama	17,669,335	4,508	17,673,843
Alaska	2,187,095	1,212	2,188,307
Arizona*	22,788,184	5,947	22,794,131
Arkansas	6,867,051	2,569	6,869,620
California	192,413,016	75,829	192,488,845
Colorado	14,509,305	4,943	14,514,248
Connecticut	11,850,579	5,086	11,855,665
Delaware	2,778,921	697	2,779,618
District of Columbia	2,990,511	1,296	2,991,807
Florida	83,019,633	27,526	83,047,159
Georgia	40,912,792	14,968	40,927,760
Hawaii	3,268,124	739	3,268,863
Idaho	4,536,856	968	4,537,824

WORKFORCE INVESTMENT ACT DISLOCATED WORKER ACTIVITIES PROGRAM YEAR 2010 REVISED ALLOTMENTS WITH REALLOTMENT—Continued

	Total		
	Original	Reallotment	Revised
Illinois	54,673,396	23,419	54,696,815
Indiana	27,257,656	8,958	27,266,614
Iowa	5,888,367	1,786	5,890,153
Kansas	6,855,442	1,778	6,857,220
Kentucky	18,089,024	6,395	18,095,419
Louisiana	9,812,674	3,164	9,815,838
Maine	4,578,544	1,562	4,580,106
Maryland	15,543,289	3,846	15,547,135
Massachusetts	22,706,846	7,252	22,714,098
Michigan	64,544,036	26,808	64,570,844
Minnesota	18,020,939	7,163	18,028,102
Mississippi	9,867,047	4,856	9,871,903
Missouri	22,223,344	8,827	22,232,171
Montana	2,174,950	600	2,175,550
Nebraska	2,428,300	885	2,429,185
Nevada	14,124,712	4,891	14,129,603
New Hampshire	3,181,956	855	3,182,811
New Jersey	33,365,324	(280,451)	33,084,873
New Mexico*	4,093,214	1,012	4,094,226
New York	65,534,311	22,679	65,556,990
North Carolina	44,039,515	15,179	44,054,694
North Dakota	690,086	313	690,399
Ohio	51,610,221	19,994	51,630,215
Oklahoma	6,905,534	2,058	6,907,592
Oregon	20,167,658	5,865	20,173,523
Pennsylvania	39,561,993	14,517	39,576,510
Puerto Rico	17,054,847	10,089	17,064,936
Rhode Island	6,227,600	(128,531)	6,099,069
South Carolina	23,089,893	8,442	23,098,335
South Dakota	1,000,388	326	1,000,714
Tennessee	26,930,077	9,695	26,939,772
Texas	61,378,563	18,374	61,396,937
Utah*	4,625,970	1,209	4,627,179
Vermont	1,787,950	598	1,788,548
Virginia	18,472,220	4,823	18,477,043
Washington	24,271,171	7,566	24,278,737
West Virginia	4,551,211	1,223	4,552,434
Wisconsin	19,934,322	5,488	19,939,810
Wyoming	786,008	199	786,207
State Total	1,183,840,000		1,183,840,000
	Available 7/1/10		
Alabama	4,833,455		4,833,455
Alaska	598,281		598,281
Arizona*	6,233,719		6,233,719
Arkansas	1,878,485		1,878,485
California	52,634,673		52,634,673
Colorado	3,969,027		3,969,027
Connecticut	3,241,732		3,241,732
Delaware	760,175		760,175
District of Columbia	818,056		818,056
Florida	22,710,060		22,710,060
Georgia	11,191,714		11,191,714
Hawaii	893,997		893,997
Idaho	1,241,059		1,241,059
Illinois	14,955,934		14,955,934
Indiana	7,456,345		7,456,345
Iowa	1,610,766		1,610,766
Kansas	1,875,309		1,875,309
Kentucky	4,948,261		4,948,261
Louisiana	2,684,262		2,684,262
Maine	1,252,463		1,252,463
Maryland	4,251,874		4,251,874
Massachusetts	6,211,469		6,211,469
Michigan	17,656,052		17,656,052
Minnesota	4,929,636		4,929,636
Mississippi	2,699,135		2,699,135

WORKFORCE INVESTMENT ACT DISLOCATED WORKER ACTIVITIES PROGRAM YEAR 2010 REVISED ALLOTMENTS WITH REALLOTMENT—Continued

	Total		
	Original	Reallotment	Revised
Missouri	6,079,206		6,079,206
Montana	594,959		594,959
Nebraska	664,263		664,263
Nevada	3,863,822		3,863,822
New Hampshire	870,426		870,426
New Jersey	9,127,100		9,127,100
New Mexico*	1,119,701		1,119,701
New York	17,926,942		17,926,942
North Carolina	12,047,030		12,047,030
North Dakota	188,773		188,773
Ohio	14,118,001		14,118,001
Oklahoma	1,889,012		1,889,012
Oregon	5,516,873		5,516,873
Pennsylvania	10,822,202		10,822,202
Puerto Rico	4,665,362		4,665,362
Rhode Island	1,703,563		1,703,563
South Carolina	6,316,251		6,316,251
South Dakota	273,657		273,657
Tennessee	7,366,735		7,366,735
Texas	16,790,135		16,790,135
Utah*	1,265,436		1,265,436
Vermont	489,095		489,095
Virginia	5,053,085		5,053,085
Washington	6,639,390		6,639,390
West Virginia	1,244,986		1,244,986
Wisconsin	5,453,043		5,453,043
Wyoming	215,013		215,013
State Total	323,840,000		323,840,000
	Available 10/1/10		
Alabama	12,835,880	4,508	12,840,388
Alaska	1,588,814	1,212	1,590,026
Arizona*	16,554,465	5,947	16,560,412
Arkansas	4,988,566	2,569	4,991,135
California	139,778,343	75,829	139,854,172
Colorado	10,540,278	4,943	10,545,221
Connecticut	8,608,847	5,086	8,613,933
Delaware	2,018,746	697	2,019,443
District of Columbia	2,172,455	1,296	2,173,751
Florida	60,309,573	27,526	60,337,099
Georgia	29,721,078	14,968	29,736,046
Hawaii	2,374,127	739	2,374,866
Idaho	3,295,797	968	3,296,765
Illinois	39,717,462	23,419	39,740,881
Indiana	19,801,311	8,958	19,810,269
Iowa	4,277,601	1,786	4,279,387
Kansas	4,980,133	1,778	4,981,911
Kentucky	13,140,763	6,395	13,147,158
Louisiana	7,128,412	3,164	7,131,576
Maine	3,326,081	1,562	3,327,643
Maryland	11,291,415	3,846	11,295,261
Massachusetts	16,495,377	7,252	16,502,629
Michigan	46,887,984	26,808	46,914,792
Minnesota	13,091,303	7,163	13,098,466
Mississippi	7,167,912	4,856	7,172,768
Missouri	16,144,138	8,827	16,152,965
Montana	1,579,991	600	1,580,591
Nebraska	1,764,037	885	1,764,922
Nevada	10,260,890	4,891	10,265,781
New Hampshire	2,311,530	855	2,312,385
New Jersey	24,238,224	(280,451)	23,957,773
New Mexico*	2,973,513	1,012	2,974,525
New York	47,607,369	22,679	47,630,048
North Carolina	31,992,485	15,179	32,007,664
North Dakota	501,313	313	501,626
Ohio	37,492,220	19,994	37,512,214
Oklahoma	5,016,522	2,058	5,018,580

WORKFORCE INVESTMENT ACT DISLOCATED WORKER ACTIVITIES PROGRAM YEAR 2010 REVISED ALLOTMENTS WITH REALLOTMENT—Continued

	Total		
	Original	Reallotment	Revised
Oregon	14,650,785	5,865	14,656,650
Pennsylvania	28,739,791	14,517	28,754,308
Puerto Rico	12,389,485	10,089	12,399,574
Rhode Island	4,524,037	(128,531)	4,395,506
South Carolina	16,773,642	8,442	16,782,084
South Dakota	726,731	326	727,057
Tennessee	19,563,342	9,695	19,573,037
Texas	44,588,428	18,374	44,606,802
Utah*	3,360,534	1,209	3,361,743
Vermont	1,298,855	598	1,299,453
Virginia	13,419,135	4,823	13,423,958
Washington	17,631,781	7,566	17,639,347
West Virginia	3,306,225	1,223	3,307,448
Wisconsin	14,481,279	5,488	14,486,767
Wyoming	570,995	199	571,194
State Total	860,000,000	.....	860,000,000

* Includes funds allocated to the Navajo Nation.

III. Attachment C

Dislocated Worker State Formula PY 2010 Reallotment Methodology

Reallotment Summary

This year, the Employment and Training Administration (ETA) analyzed State Workforce Investment Act (WIA) Dislocated Worker 9130 financial reports from the 6/30/10 reporting period for program year (PY) 2009 to determine if any State had unobligated funds in excess of twenty percent of their PY 2009 allotment amount. If so, that amount will be recaptured from PY 2010 funds and realloted among eligible States.

- *Source Data:* State WIA 9130 Financial Status Reports.
- *Program:*

State Dislocated Worker.
Rapid Response.
Local Dislocated Worker (includes local administration).

- *Period:* June 30, 2010.
- *Years Covered:* PY 2009.

Reallotment Calculation Process

(1) Determine the unobligated balance: In order to accomplish this, ETA computes the State's total amount of PY 2009 State obligations (including FY 2010 funds) for the Dislocated Worker (DW) program. State obligations are the sum of DW statewide activities obligations, Rapid Response obligations, and 100 percent of local DW program funds (which includes funds for local administration). The State's total unobligated balance for the DW program is the 2009 DW allotment amount minus the total DW obligations. (*Note:* for re-allotment purposes, DW allotted funds transferred to the Navajo Nation are added back to Arizona, New Mexico, and Utah local DW authorized amounts).

(2) Excluding State administrative costs: Section 667.150 of the regulations provides that the recapture calculations exclude the reserve for State administration, which is part of the DW statewide activities. Data on State administrative amounts authorized and obligated are not reported on WIA 9130 financial reports. In the preliminary calculation to determine States potentially liable for recapture, the DW portion of the State administrative amount authorized is estimated by calculating the five percent maximum amount for State DW administrative costs using the DW State allotment amounts. For the DW portion of the State administrative amount obligated, 100 percent of the estimated authorized amount is treated as obligated.

(3) Follow-up with States potentially liable for recapture: ETA requests that those States potentially liable for recapture provide additional data on State administrative amounts included in the PY 2009 and FY 2010 Statewide Activities amounts (authorized and obligated as of 6/30/10). If a State provides actual State DW administrative costs, authorized and obligated, in the comments section of revised 9130 reports, this data replaces the estimates. Based on the requested additional actual data submitted by potentially liable States on revised reports, the DW total allotment for these States is reduced by the DW portion of the State administrative amount authorized. Likewise, the DW total obligations for these States are reduced by the DW portion of the obligated State administrative funding.

(4) Those States (including those adjusted by actual State administrative data) with *unobligated balances* exceeding 20 percent of the combined PY2009 DW *allotment amount* will have their PY 2010 DW funding (from the FY 2011 advance portion of PY 2010 DW funding made available in the FY 2010 Appropriations Act) reduced (recaptured) by the amount of the excess.

(5) Finally, States with unobligated balances which do *not* exceed 20 percent (eligible States) will receive a share of the total recaptured amount (based on their share of the total PY 2009 DW allotments of eligible States) in their PY 2010 DW funding (the FY 2011 advance portion of PY 2010 DW funding made available in the FY 2010 Appropriations Act).

Signed at Washington, DC this 11th day of March, 2011.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2011–6139 Filed 3–15–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0060]

Methylene Chloride 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 Methylene Chloride Standard (29 CFR 1910.1052).

DATES: Comments must be submitted (postmarked, sent, or received) by May 16, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0060, 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–2011–0060). 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–3468, 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 OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The standard entitled "Methylene Chloride" (MC) (29 CFR 1910.1052; the "Standard") protects workers from the adverse health effects that may result from their exposure to methylene chloride. The requirements in the Standard include worker exposure monitoring, notifying workers of their MC exposures, administering medical examinations to workers, providing examining physicians with specific program and worker information, ensuring that workers receive a copy of their medical examination results, training workers on the hazards of MC, maintaining workers' exposure monitoring and medical examination records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and their authorized representatives.

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 Methylene Chloride Standard (29 CFR 1910.1052). The Agency is requesting a decrease in burden hours from 67,362 to 63,561 (a total decrease of 3,801 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: Methylene Chloride Standard (29 CFR 1910.1052).

OMB Number: 1218–0179.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal government; State, local, or Tribal governments.

Number of Respondents: 90,596.

Frequency of Response: Annually; monthly; on occasion.

Total Responses: 250,925.

Average Time per Response: Varies from 1 hour for administering a medical examination to 5 minutes to maintain a worker's medical or exposure record.

Estimated Total Burden Hours: 63,561.

Estimated Cost (Operation and Maintenance): $19,214,570.

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–2011–0060). 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 11, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–6101 Filed 3–15–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–023)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, April 14, 2011, 9 a.m. to 5:30 p.m.; and Friday, April 15, 2011, 9 a.m. to 1 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 5H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status.
—Status of Living with a Star Program.
—Status of Solar Terrestrial Probes Program.
—Status of Explorer Program.
—Research and Analysis Programs.
—Report from Data and Computing Working Group.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: March 10, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–6142 Filed 3–15–11; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of three currently approved information collections. The first information collection is used to obtain information from private foundations or other entities in order to design, construct and equip Presidential libraries. The second information collection is used when veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records. The third information collection is a voluntary survey of visitors to the National Archives Experience (NAE) in Washington, DC. The information is used to determine how the various components of the NAE affect visitors' level of satisfaction with the NAE and how effectively the venues communicate that records matter. The

information supports adjustments in our offerings that will improve the overall visitor experience. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 16, 2011 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection informations are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by these collections. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Presidential Library Facilities.
OMB number: 3095–0036.
Agency form number: None.
Type of review: Regular.
Affected public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.
Estimated number of respondents: 1.
Estimated time per response: 31 hours.
Frequency of response: On occasion.
Estimated total annual burden hours: 31 hours.
Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

2. *Title:* Forms Relating to Military Service Records.
OMB number: 3095–0039.
Agency form number: NA Forms 13036, 13042, 13055, and 13075.
Type of review: Regular.
Affected public: Veterans, their authorized representatives, State and local governments, and businesses.
Estimated number of respondents: 79,800.
Estimated time per response: 5 minutes.
Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).
Estimated total annual burden hours: 6,650 hours.
Abstract: The information collection is prescribed by 36 CFR 1228.162. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed To Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed To Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

3. *Title:* NARA Visitors Study.
OMB number: 3095–0067.
Agency form number: N/A.
Type of review: Regular.
Affected public: Individuals who visit the National Archives Experience in Washington, DC.
Estimated number of respondents: 200.
Estimated time per response: 12 minutes.
Frequency of response: On occasion (when an individual visits the National Archives Experience in Washington, DC).
Estimated total annual burden hours: 40 hours.
Abstract: The general purpose of this voluntary data collection is to benchmark the performance of the NAE in relation to other history museums. Information collected from visitors assesses the overall impact, expectations, presentation, logistics, motivation, demographic profile and learning experience. Once analysis is done, this collected information assists NARA in determining the NAE's success in achieving its goals.

Dated: March 11, 2011.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2011–6210 Filed 3–15–11; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100

Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 1, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for United States History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

2. *Date:* April 4, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Art in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

3. *Date:* April 5, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for Sustaining Cultural Heritage Collections V in Sustaining Cultural Heritage Collections Program, submitted to the Division of Preservation and Access at the December 1, 2010 deadline.

4. *Date:* April 5, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for American Studies in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

5. *Date:* April 6, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Visual Arts in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

6. *Date:* April 7, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for American Studies in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

7. *Date:* April 7, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for Two-Year Colleges, submitted to the Office of Challenge Grants at the February 2, 2011 deadline.

8. *Date:* April 12, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for Sustaining Cultural Heritage Collections VI in Sustaining Cultural Heritage Collections Program, submitted to the Division of Preservation and Access at the December 1, 2010 deadline.

9. *Date:* April 12, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Literature and Radio in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

10. *Date:* April 13, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for Sustaining Cultural Heritage Collections VII in Sustaining Cultural Heritage Collections Program, submitted to the Division of Preservation and Access at the December 1, 2010 deadline.

11. *Date:* April 13, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for World Cultures in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

12. *Date:* April 14, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for American Studies in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 12, 2011 deadline.

13. *Date:* April 14, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room M–07.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

14. *Date:* April 15, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room M–07.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

15. *Date:* April 21, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room M–07.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

16. *Date:* April 26, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room M–07.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

17. *Date:* April 27, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room M–07.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 1, 2011 deadline.

18. *Date:* April 28, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room M–07.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 1, 2011 deadline.

19. *Date:* April 28, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for Two-Year Colleges,

submitted to the Office of Challenge Grants at the February 2, 2011 deadline.

20. *Date:* April 29, 2011.

Time: 9 a.m. to 5 p.m.

Location: Room M–07.

Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 1, 2011 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2011–6102 Filed 3–15–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: April 1, 2011, 2 p.m.–4 p.m.

Place: Teleconference, National Science Foundation, 4201 Wilson Blvd., Room 1160, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Kristen Oberright, Office of the Director, Office of Cyberinfrastructure (OD/OCI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Discussion to approve taskforce reports.

Dated: March 10, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–6069 Filed 3–15–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0441]

South Carolina Electric and Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper); Notice of Availability of Application for a Combined License

On March 27, 2008, South Carolina Electric and Gas Company (SCE&G) acting as itself and agent for the South Carolina Public Service Authority also known as Santee Cooper filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the Code of Federal Regulations (10 CFR) part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for combined licenses (COLs) for two AP1000 advanced passive pressurized water reactors at the existing Virgil C. Summer Nuclear Site (VCSNS) located in Fairfield County, South Carolina. The reactors are to be identified as VCSNS Units 2 and 3. The application is currently under review by the NRC staff.

An applicant may seek a COL in accordance with subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements found in 10 CFR 50.43(a)(3).

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the cover letter of the application is ML081300460. Other publicly available documents related to the application, including revisions filed after the initial submission, are also posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html.*

Dated at Rockville, Maryland, this 9th day of March 2011.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–6126 Filed 3–15–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–156; NRC–2010–0203]

University of Wisconsin, University of Wisconsin Nuclear Reactor; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on September 16, 2010 (75 FR 56597), which informed the public that the U.S. Nuclear Regulatory Commission is considering issuance of a renewed Facility License No. R–74 for the University of Wisconsin which would authorize continued operation of the University of Wisconsin Nuclear Reactor. This action is necessary to add supplemental documentation and to correct dose equivalent values.

FOR FURTHER INFORMATION CONTACT: Geoffrey A. Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–0893, *e-mail: Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 56599, appearing in the third column, first paragraph under *Environmental Effects of Accidents,* add to the end of the sentence ", and as supplemented on February 8, 2011 (ADAMS Accession No. ML110410534)." Also appearing in the third column, next to the last sentence under *Environmental Effects of Accidents,* the dose equivalent values are being corrected to incorporate the supplemental information received to read from "The maximum dose to a worker in confinement for 5 minutes would be 1.35 rem total effective dose equivalent, 35.8 rem committed dose equivalent to the thyroid gland, and 278 millirem effective dose equivalent" to "The maximum dose to a worker in confinement for 5 minutes would be 0.145 rem total effective dose equivalent, 3.67 rem committed dose equivalent to the thyroid gland, and 34.6 millirem effective dose equivalent."

Dated at Rockville, Maryland, this 8th day of March 2011.

For the Nuclear Regulatory Commission.

Jessie Quichocho,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–6127 Filed 3–15–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0055]

Economic Simplified Boiling Water Reactor Standard Design: GE Hitachi Nuclear Energy; Issuance of Final Design Approval

The U.S. Nuclear Regulatory Commission has issued a final design approval (FDA) to GE Hitachi Nuclear Energy (GEH) for the economic simplified boiling water reactor (ESBWR) standard design under Subpart E, "Standard Design Approvals," of Title 10 of the Code of Federal Regulations (10 CFR) part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." This FDA allows the ESBWR standard design to be referenced in an application for a construction permit or operating license under 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," or an application for a combined license or manufacturing license under 10 CFR part 52. In addition, the Commission has issued the final safety evaluation report (FSER) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102850376) that supports issuance of the FDA.

Issuance of this FDA signifies completion of the NRC staff's technical review of GEH's ESBWR design. The NRC staff performed its technical review of the ESBWR design control document in accordance with the standards for review of standard design approval applications set forth in 10 CFR 52.139, "Standards for Review of Applications," as modified by the exemptions identified in Section 1.8 of the NRC's FSER.

On the basis of its evaluation and independent analyses, as described in the FSER, the NRC staff concludes that GEH's application for standard design approval meets the applicable portions of 10 CFR 52.137, "Content of Applications; Technical Information," and the review standards identified in 10 CFR 52.139, except for those review standards subject to the exemptions identified in Section 1.8 of the FSER.

Copies of the ESBWR FSER and FDA have been placed in the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, for review and copying by interested persons.

Dated at Rockville, Maryland, this 9th day of March 2011.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–6129 Filed 3–15–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–0299; NRC–2011–0054]

Notice of Opportunity To Request a Hearing and To Petition for Leave To Intervene, License Amendment Request From Umetco Minerals Corporation for Approval of an Erosion Enhancement Design for the Gas Hills Reclamation Project; Source Material License No. SUA–648

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt of a license amendment request and opportunity to request a hearing.

DATES: Requests for a hearing must be filed by May 16, 2011.

ADDRESSES: You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for the documents related to this notice are: ML1036402653, and ML110340384.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Senior Project Manager, Special Projects Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–6749; *fax number:* 301–415–5369; *e-mail: Dominick.Orlando@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Umetco Minerals Corporation (Umetco) uranium mill site is located in the East Gas Hills area of central Wyoming, 50 miles (80 km) southeast of Riverton, and west of East Canyon Creek. The Umetco site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA–648 to possess byproduct material in the form of uranium mill waste tailings, as well as other radioactive wastes generated by past milling operations.

The mill operated from 1960 to 1979 and has been dismantled. The current Umetco site consists of three primary tailings disposal areas on the 1,920 acre parcel—the 170 acre Above Grade Tailings Impoundment (AGTI), the 55 acre A–9 Repository, and the 60 acre Heap Leach area. In addition, the Gas Hills Pond No. 2 area, adjacent to the AGTI and Heap Leach area, also contains waste from heap leach operations.

Monitoring and inspection activities performed by Umetco of the AGTI and A–9 Reclamation covers have identified isolated shallow incisions of the underlying cover soils in isolated locations on the AGTI and A–9 covers. Subsequent field investigations and review of approved design documents by Umetco has identified what Umetco believes is the cause of the sub-grade erosion. The cause identified by Umetco is an error in the calculation of the interstitial velocity for determining if a filter or bedding layer is necessary in the erosion protection design. Umetco stated that they had completed a review of approved designs associated with all reclamation cover systems constructed at the site to ensure the design deficiency is confined to AGTI and A–9 and that other potential contributing factors are adequately addressed.

In a letter dated December 21, 2010, Umetco requested NRC approval of a design for various erosion protection enhancements for the AGTI, the A–9 Repository, the Launch Rock area located at the eastern toe of the AGTI, and an area located adjacent to the southeast corner of the reclamation cover toe (ADAMS Accession No. ML1036402653).

An administrative review, documented in an e-mail to Umetco dated January 31, 2011 (ADAMS Accession No. ML110340384), found Umetco's request acceptable to begin a formal technical review. If the NRC

approves the request, the approval will be documented by amending NRC License No. SUB–648. The license will be revised by adding a license condition describing the erosion protection enhancements and any changes thereto or related requirements arising from the NRC's safety review. However, before approving Umetco's request and amending NRC License No. SUB–648, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an environmental analysis.

II. Opportunity To Request a Hearing/ Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in Title 10 of the Code of Federal Regulations (10 CFR) Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland (or call the PDR at 800–397–4209 or 301–415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

If a request for a hearing and a petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 16, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 16, 2011.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing rule requires participants to submit and serve all adjudicatory

documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the NRC's E-Filing system, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law required submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 7th day of March 2011.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–6128 Filed 3–15–11; 8:45 am]

BILLING CODE 7590–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

[Doc. No. 11–002]

No FEAR Act Notice

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is providing notice to its employees, former employees, and applicants for Board employment about the rights and remedies available to them under the Federal antidiscrimination, whistleblower protection, and retaliation laws. This notice fulfills the Board's initial notification under the Notification and Federal Employee

Antidiscrimination and Retaliation Act (No FEAR Act or Act), as implemented by Office of Personnel Management (OPM) regulations 5 CFR part 724.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, by mail at Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006, or by telephone at (202) 254–7900. Additional information can be found at the Board's Web site at *http://www.recovery.gov.*

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. *See* Public Law 107–174, codified at 5 U.S.C. 2301 note. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107–174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to its employees, former employees and applicants for Board employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 2 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.* 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (*see* contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosures of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosures of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site, *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, agencies must seek approval from OSC to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For Further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (*e.g.,* human resources office or legal office). Additional information regarding Federal antidiscrimination laws can be found at the EEOC Web site, *http://www.eeoc.gov,* and the OSC Web site, *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2011–6076 Filed 3–15–11; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 40–F; OMB Control No. 3235–0381; SEC File No. 270–335.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments

on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 40–F (17 CFR 249.240f) is used by certain Canadian issuers to register a class of securities under to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78*l*) or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)). The information required in the Form 40–F is used by investors in making investment decisions with respect to the securities of such Canadian companies. We estimate that Form 40–F takes approximately 427 hours per response and is filed by approximately 205 respondents. We estimate that 25% of the 427 hours per response (106.75 hours) is prepared by the issuer for a total reporting burden of 21,884 (106.75 hours per response x 205 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 10, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6074 Filed 3–15–11; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes extensions of and a revision to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collection listed below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 16, 2011. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Statement Regarding Contributions—20 CFR 404.360–404.366 and 404.736—0960–0020. SSA examines a child's current sources of support when determining the child's entitlement to Social Security benefits. To make this determination, SSA collects information on Form SSA–783. The respondents are individuals providing information about a child's sources of support.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 17 minutes.

Estimated Annual Burden: 8,500 hours.

II. SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 15, 2011. You can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *RSI/DI Quality Review Case Analysis—Sampled Number Holder; Auxiliaries/Survivors; Parent; Stewardship Annual Earnings Test—0960–0189.* SSA collects information on Forms SSA–2930, SSA–2931, and SSA–2932 to establish a national payment accuracy rate for all cases in payment status, and to serve as a source of information regarding problem areas in the Retirement Survivors Insurance (RSI) and Disability Insurance (DI) programs. SSA also uses the information to measure the accuracy rate for newly adjudicated RSI/DI cases. SSA collects information on Form SSA–4659 to evaluate the effectiveness of the annual earnings test and uses the results in developing ongoing improvements in the process.

About 25 percent of respondents will have in-person reviews and receive one of the following appointment letters: SSA–L8550–U3 (Appointment Letter—Sample Individual), SSA–L8551–U3 (Appointment Letter—Sample Family), or the SSA–L8552–U3 (Appointment Letter—Rep Payee). Seventy-five percent of respondents will receive a notice for a telephone review using the SSA–L8553–U3 (Beneficiary Telephone Contact) or the SSA–L8554–U3 (Rep Payee Telephone Contact).

To help the beneficiary prepare for the interview, we include three forms with each notice:

(1) SSA–85 (Information Needed to Review Your Social Security Claim) lists the information the beneficiary will need to gather for the interview;

(2) SSA–2935 (Authorization to the Social Security Administration to Obtain Personal Information) verifies the beneficiary's correct payment amount, if necessary; and

(3) SSA–8552 (Interview Confirmation) confirms or reschedules the interview if necessary.

The respondents are a statistically valid sample of all RSI/DI beneficiaries in current pay status or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Form number	Number of responses	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–2930	1,500	1	30	750
SSA–2931	750	1	30	375
SSA–2932	100	1	20	33
SSA–4659	325	1	10	54
SSA–L8550–U3	385	1	5	32
SSA–L8551–U3	95	1	5	8
SSA–L8552–U3	35	1	5	3
SSA–L8553–U3	4,490	1	5	374
SSA–L8554–U3	670	1	5	56
SSA–8552	2,350	1	5	196
SSA–85	3,850	1	5	321
SSA–2935	2,350	1	5	196
SSA–820/821	400	1	15	100
SSA–8510	800	1	5	67
iClaim Stewardship Questions	324	1	10	54
Totals	18,424			2,619

2. *Employer Reports of Special Wage Payments—20 CFR 404.428—404.429—0960–0565.* SSA collects information on the SSA–131 to prevent earnings-related overpayments and to avoid erroneous withholding of benefits. SSA field offices and processing centers also use Form SSA–131 for awards and post-entitlement events requiring special wage payment verification from employers. The respondents are large and small businesses that make special wage payments to retirees.

Type of Request: Extension of an OMB-approved information collection.

Completed form	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Paper Version: SSA–131 (without #6)	105,000	1	20	35,000
Paper Version: SSA–131 (#6 only)	1,050	1	2	35
Electronic Version: BSO Special Wage Payments	26	1	5	2
Totals	106,076			35,037

Dated: March 11, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–6082 Filed 3–15–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7359]

60-Day Notice of Proposed Information Collection: DS 6561 Pre-Assignment for Overseas Duty for Non Foreign Service Personnel; New Collection OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Pre-Assignment for Overseas Duty Bon-Foreign Service Personnel.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New Collection.
- *Originating Office:* M/MED/CL.
- *Form Number:* DS 6561.
- *Respondents:* Overseas employees and family members, not in the Foreign Service.
- *Estimated Number of Respondents:* 8,000.
- *Estimated Number of Responses:* 8,000.
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 8,000.
- *Frequency:* Every 2–3 years.
- *Obligation to Respond:* Mandatory to retain medical clearance.

DATES: The Department will accept comments from the public up to 60 days from March 16, 2011.

ADDRESSES: Office of MED Clearances SA 15 1800 North Kent St. Rosslyn, VA 22209. You may submit comments by any of the following methods:

- *E-mail: mahoneybj@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* 1800 N. Kent St. Rosslyn, VA 22209.
- *Fax:* 703–875–4850.
- *Hand Delivery or Courier:* [insert street address—this address is optional].

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Barbara Mahoney Office of Medical Services SA 15, 1800 N. Kent St.

Rosslyn, VA 22209, who may be reached on 703–875–5413.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The DS 6561 form provides a concise summary of basic medical history, lab tests and physical examination. Since users of this form are not career Foreign Service Officers and may work for limited periods of time overseas, this form is an efficient method of assessing the status of their health. Respondents are members of non-Foreign Affairs Agencies.

Methodology:

Information is collected at overseas medical units, by physicians in MED's Exam Clinic at SA 1 and by private physicians overseas. Information is collected mostly by fax and electronic submission.

Dated: February 10, 2011.

Joseph A. Kenny,

Executive Director, Office of Medical Services M/MED, Department of State.

[FR Doc. 2011–6131 Filed 3–15–11; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

High-Speed Intercity Passenger Rail (HSIPR) Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability for high-speed and intercity passenger rail projects.

SUMMARY: This notice details the application requirements and procedures for obtaining funding under FRA's High-Speed Intercity Passenger Rail (HSIPR) program. The funding opportunities described in this notice are available under Catalog of Federal Domestic Assistance (CFDA) number 20.319.

Notice to Applicants: FRA recommends applicants read this notice in its entirety prior to preparing application materials. There are several administrative prerequisites that applicants must comply with in order to submit an application (*see* Section 4 of this notice), which can take up to ten days to process.

DATES: Applications for funding under this solicitation are due no later than 8 p.m. EDT on Monday, April 4, 2011, and must be submitted through *http://www.grantsolutions.gov. See* Section 4 for additional information regarding the application process. FRA reserves the right to modify this deadline.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice and the HSIPR program, please contact the FRA HSIPR Program Manager via e-mail at *HSIPR@dot.gov,* or by mail: U.S. Department of Transportation, Federal Railroad Administration, MS–20, 1200 New Jersey Avenue, SE., Washington, DC 20590 Attn: HSIPR Program.

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Section 1: Funding Opportunity Description

1.1 Legislative Authority

This financial assistance announcement is intended to solicit proposals for high-speed and intercity passenger rail projects under FRA's HSIPR program. The authority for this grant program is contained in three pieces of legislation:

- The Passenger Rail Investment and Improvement Act of 2008 (Div. B of Pub. L. 110–432, October 16, 2008) (PRIIA), under Sections 301, 302, and 501: Intercity Passenger Rail Service Corridor Capital Assistance (codified at 49 U.S.C. chapter 244), General Passenger Rail Transportation (codified at 49 U.S.C. 24105), and High-Speed Rail Assistance (codified at 49 U.S.C. 26106), respectively;
- The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, February 17, 2009) (ARRA or the Recovery Act), under the title "Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service;" and
- The Fiscal Year 2010 Consolidated Appropriations Act (Title I of Div. A of Pub. L. 111–117, December 16, 2009) (FY 2010 DOT Appropriations Act), under the title "Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service."

1.2 Background

Since enactment of PRIIA, FRA has made approximately $10.6 billion available under the HSIPR program. Award of these funds has served to jump-start high-speed and intercity passenger rail projects throughout the country. However, recently it has become clear that some of the funds previously announced would not be used to advance the originally intended projects; in particular, approximately $2.392 billion announced for the State of Florida.

The purpose of this notice is to solicit applications—for eligible projects that could immediately proceed to award—for the approximately $2.392 billion previously announced for Florida and approximately $38 million in remaining unallocated Recovery Act funding. This notice is also intended to establish a pipeline of meritorious projects that could receive any other HSIPR funds available at the time of award. These other funds could include savings that result from previously awarded projects coming in under budget, funds withdrawn from previously awarded projects that are not proceeding satisfactorily, any other appropriated funds authorized under PRIIA and made available through the remainder of this fiscal year, or other sources.

The approximately $2.392 billion previously announced for Florida included funds provided both under the Recovery Act and the FY 2010 DOT Appropriations Act. Additional funds awarded under this notice could be provided from other sources. Therefore, applicants should not be concerned with applying for funds from a specific appropriations statute; rather they should seek to submit the best projects that could be funded from any or all such sources. Additionally, all applicants are encouraged to contribute non-Federal matching funds, a factor that will be considered when evaluating the merit of an application. While applicants may identify any aspects of their projects that might favor one or the other appropriations statute (the different requirements for each source of funding are discussed in Sections 1.3, 3, and 6), FRA will determine which funding to provide to projects selected for award at its own discretion. However, applicants should note that any projects receiving funding under the Recovery Act must be able to be obligated by September 30, 2012 and completed by September 30, 2017—both statutory requirements under the Recovery Act.

Furthermore, while Florida received approximately $2.392 billion for one project—the Tampa to Orlando High-Speed Rail Service Development Program—FRA is not requiring the full amount awarded under this solicitation be provided to one project or one corridor. Rather, FRA is directing this solicitation to all interested and eligible applicants, and anticipates making multiple awards with the funding available. Recognizing the limited funding currently available and FRA's intention to make multiple awards, applicants would be well-advised to subdivide higher-cost undertakings into separate project components or discrete phases that have operational independence in order to give FRA maximum flexibility in selecting projects (*see* Sections 3.5.2 and 4.2.1 for more information on operational independence and application phasing). In describing these separate project components or phases, applicants should be sure to describe both the operational independence of each individual project or phase and the benefits of completing just the discrete project or phase, even if the full Service Development Program is not selected for funding in this award cycle.

FRA is committed to ensuring that the HSIPR program is a success. In responding to this solicitation, applicants should clearly demonstrate that the project sponsor and any other relevant stakeholder directly involved in the project are committed to ensuring the success of the project proposed for funding.

1.3 Funding Approach

At least $2.43 billion is available for awards under this solicitation, including $1.63 billion from the Recovery Act and $800 million from the FY 2010 DOT Appropriations Act. FRA is soliciting grant applications for the following types of projects:

- *Service Development Programs:* A set of inter-related capital projects that will result in the introduction of new or substantially improved high-speed or intercity passenger rail services. Projects funded with Recovery Act appropriations may have a Federal share of total project costs up to 100 percent and must be completed by September 30, 2017. Projects funded with FY 2010 annual appropriations must provide a non-Federal match of at least 20 percent of total project costs; funding will remain available until expended and according to the terms and conditions of the cooperative agreement.
- *Individual Projects:* Discrete capital projects that will result in service benefits or other tangible improvements on a corridor. These projects include completion of preliminary engineering (PE), National Environmental Policy Act (NEPA) documentation, final design (FD), and construction. For the purpose of this solicitation and the application process, these projects are divided into two categories: PE/NEPA applications and FD/construction applications (*see* Section 3.4.3 for further information). Due to statutory limitations contained in the FY 2010 DOT Appropriations Act, funding for Individual Projects is only available under the Recovery Act. These projects may have a Federal share of total project costs up to 100 percent and must be completed by September 30, 2017.

Section 2: Award Information

While at least $2.43 billion is currently available for awards (*see* Section 1), this solicitation may also serve as the basis for reallocating other funding under the Recovery Act or the FY 2010 DOT Appropriations Act, including funds available from previously awarded projects coming in under budget, from funds withdrawn from previously awarded projects that are not proceeding satisfactorily, and from any other appropriated funds authorized under PRIIA and made available through the remainder of this fiscal year, or from other sources.

The FY 2010 DOT Appropriations Act mandated that not less than 85 percent of the total available funding be allocated to Service Development Programs. Due to the funding awarded for Individual Projects under the initial solicitation for FY 2010 appropriations and announced by the Secretary of Transportation on October 28, 2010, the $800 million in remaining FY 2010 appropriations will be dedicated solely to Service Development Programs.

The Recovery Act did not specify what proportion of funding should be allocated for particular project types. As a result, and consistent with previous funding solicitations, FRA will not allocate funding between Service Development Programs and Individual Projects in advance. FRA will award the $1.63 billion in available Recovery Act funding to Service Development Programs and Individual Projects based on the outcomes of the application review and selection (*see* Section 5).

Applications for projects that were submitted under the initial solicitations for Recovery Act and FY 2010 annual appropriations funding may be updated with the most current information available and resubmitted for consideration. However, applicants should be aware that all applications will be reviewed and evaluated based on the requirements contained in this notice.

FRA will make awards for Service Development Programs and Individual Projects through cooperative agreements. Cooperative agreements allow for greater Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The funding provided under these cooperative agreements will be made available to grantees on a reimbursable basis.

While there are no predetermined minimum or maximum dollar thresholds for awards, FRA anticipates making multiple awards from the funding available. As such, FRA expects applicants to tailor their applications and proposed project scopes accordingly, ensuring that the proposed level of public investment is commensurate with the expected public benefits. In order to attain the maximum benefits for the available funding and promote successful project delivery, applications offering substantial non-Federal financing options will be looked on more favorably during the review and selection process (*see* Section 5). Pursuant to 49 U.S.C. 24402(g)(1), FRA will establish the net project cost for the scope of work proposed in an application, based on engineering materials, studies of economic feasibility, information on the expected use of equipment or facilities, and other project information provided in an application. FRA reserves the right to contact applicants with any questions or comments related to applications.

Section 3: Eligibility Information

Applications under this solicitation will be required to meet minimum requirements related to applicant eligibility, project eligibility, and the fulfillment of other eligibility requirements. To the extent that an application's substance exceeds the minimum eligibility requirements described below, such information will be considered in evaluating the merits of an application (*see* Section 5 for evaluation and selection criteria).

3.1 Eligible Applicants

Eligible applicant entities are as follows:

- States (including the District of Columbia);
- Groups of States (Sections 301 and 501 of PRIIA);
- Interstate compacts (Sections 301 and 501);
- Public agencies established by one or more States and having responsibility

for providing intercity passenger rail service (Section 301) or high-speed passenger rail service (Section 501);

• Amtrak (Section 501); and

• Amtrak, in cooperation with States (Sections 301 and 302; *see* 49 U.S.C. 24402(e) for additional information on Amtrak's eligibility requirements when applying for grants in cooperation with States).

3.2 Minimum Qualifications for Applicant Eligibility

An applicant must, in addition to demonstrating that it meets the requirements as an eligible entity, affirmatively demonstrate that the applicant has or will have the legal, financial, and technical capacity to carry out the activities proposed within an application. A prospective applicant that does not fall within the definition of a State, group of States, or Amtrak will also be required to submit documentation (such as copies of legislation) demonstrating its legal authority to provide intercity or high-speed passenger rail service on behalf of a State or group of States.

In addition, the applicant must demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project and the capability and willingness to maintain such equipment or facilities.

For an applicant to demonstrate the legal, financial, and technical capacity to carry out the activities proposed in the application, the applicant will be required to address the following qualifications:

• The applicant's ability to absorb potential cost overruns or financial shortfalls;

• The applicant's experience in effectively administering grants of similar scope and value (including timely completion of grant deliverables, compliance with grant conditions, and quality and cost controls); and

• The applicant's experience in managing railroad investment project development activities of a nature similar to those for which funding is being requested.

For an applicant to demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, the applicant will be required to show either:

• That the applicant has or will have direct ownership of the equipment or facilities acquired, constructed, or improved by the project; or

• That the applicant has secured or has made progress towards securing and will have enforceable contractual agreements providing satisfactory continuing control in place with the entity or entities (*e.g.,* one or more railroads, or a local government) that have or will have direct ownership of such assets.

For an applicant to demonstrate that it has or will have the capability and willingness to maintain the equipment or facilities acquired, constructed, or improved by the project, the applicant will be required to show:

• That it has made progress toward, and will have contractual agreements in place with, any entity or entities (*e.g.,* one or more railroads, or a local government) that have or will have direct ownership of the equipment or facilities acquired, constructed, or improved by the project, which address financial and operational responsibility for asset use and maintenance for the useful life of the asset;

• That, to the extent financial responsibility will fall to the applicant, a viable funding source(s) has been identified to cover maintenance costs; and

• The applicant's experience in maintaining assets with similar financial and operational maintenance requirements as those assets for which funding is being requested.

Information and documentation demonstrating the fulfillment of the minimum qualifications described above must be submitted as part of the application (*see* Section 4.2).

3.3 Cost Sharing

3.3.1 Applicant Cost Sharing

While the minimum required non-Federal share of total project costs will vary based on the source of funding, all applicants are encouraged to contribute non-Federal matching funds from their own, their partner project sponsors', or other interested parties' resources. Matching funds provided in excess of the minimum requirements will be considered in evaluating the merit of an application.

FRA may chose to award funds under the Recovery Act, FY 2010 DOT appropriations, other sources, or a combination at its discretion, regardless of any preferences expressed by the applicant. The Federal share of the costs of projects selected to receive Recovery Act awards may be up to 100 percent. The Federal share of the costs of projects selected to receive FY 2010 DOT appropriations awards shall not exceed 80 percent.

3.3.2 Requirements for Applicant Cost Sharing

Whether optional (for Recovery Act funding) or mandatory (for FY 2010 funding), an applicant's contribution toward the cost of its proposed project may be in the form of cash or, with FRA approval, in-kind contributions of services or supplies related to the activities proposed for funding. As part of its application, an applicant offering an in-kind contribution must provide a documented estimate of the monetary value of any such contribution and its eligibility under 49 CFR 18.24 or 19.23. However, all in-kind contributions must be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles, and must not represent double-counting of costs otherwise accounted for in an indirect cost rate pursuant to which the applicant will seek reimbursement.

The applicant must provide, as part of its application, documentation that demonstrates that it has committed and will be able to fulfill any required or pledged contribution, including committing any required financial resources that are budgeted or planned at the time the application is submitted.

All applicants will be required to identify a viable funding source(s) at the time of application to absorb any cost overruns and deliver the proposed project with no Federal funding or financial assistance beyond that provided in the cooperative agreement.

3.4 Eligible Projects

3.4.1 Definition of Capital Projects

Capital projects are defined by 49 U.S.C. 24401(2) and 49 U.S.C. 26106(b)(3) as acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of high-speed and intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to high-speed and intercity passenger rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, acquiring, constructing, relocating, and rehabilitating replacement housing, rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service; providing access to rolling stock

for nonmotorized transportation and storage capacity in trains for such transportation, equipment, and other luggage. FRA will not fund activities not included in this definition nor consider the funding of any such activities in calculating an applicant's required cost share.

3.4.2 Eligible Service Development Programs

Eligible Service Development Programs under this funding announcement must consist of a coordinated and comprehensive grouping of capital projects that will result in the introduction of new high-speed or intercity passenger rail services or significant improvements to existing corridor services (*see* Section 3.4.1 for more information about capital projects). These investments will generally address, in a comprehensive manner, the construction and acquisition of infrastructure, equipment, and stations, and other facilities necessary to operate high-speed and intercity passenger rail service.

To be considered eligible for HSIPR program funding, an applicant applying for funding for a Service Development Program must have completed and submitted a NEPA document satisfying FRA's "Service NEPA" requirement with its application. Project PE, site-specific NEPA, final design, and construction activities are eligible to receive funding.

For applications for Service Development Programs that are intended to advance directly into final design, FRA requires project NEPA documents and all PE for project components to be completed and submitted with the application.

3.4.3 Eligible Individual Projects

Individual Projects are discrete capital projects that will result in service benefits or other tangible improvements on a corridor (*see* Section 3.4.1 for more information about capital projects). Eligible Individual Project activities under this funding announcement include completion of PE/NEPA documentation, FD, and construction activities. These activities are broken into two categories for the purpose of this solicitation and the application process:

- PE/NEPA completion: Activities proposed in an application must include all remaining work needed to complete both PE and NEPA documentation to be eligible. The resulting PE/NEPA documents must be sufficiently developed to support immediate commencement of final design or construction activities; however, these final design and construction activities would not be funded as part of the grant award.
- FD/Construction activities: Applications should include the design, construction, and full implementation of projects that have completed PE/NEPA requirements. FRA may consider funding only final design for projects that represent a critical strategic investment for HSIPR service, are sufficiently complex and broad in scope, and for which final design would constitute a substantial step in implementing the project.

3.4.4 Previously-Selected Projects

FRA will not make awards for activities or component projects under this solicitation that were selected to receive HSIPR program funding under any previous solicitation. However, applicants may submit an application to augment a project or component thereof that was selected under a previous solicitation. In this instance, the application must demonstrate the following:

- The applicant has, at the time it submits the new application, sufficiently refined the scope of previously-selected elements of the project to ensure those elements will have operational independence, as defined in Section 3.5.2 of this notice;
- Any new elements of a project proposed in the current application will also have operational independence;
- The applicant possesses the capacity and capability to manage and implement the proposed increase in scope of the project in addition to the scope of work previously selected to receive funding; and
- There is a demonstrated current need for additional funding to implement the proposed increase in scope of the project and the ability to expend the original and additional funds in the near term.

3.5 Additional Eligibility Requirements

3.5.1 Project Planning

All projects must be identified through a transparent, inclusive planning process that analyzes the investment needs and objectives for the intercity passenger rail service that the project is intended to benefit.

For Service Development Programs, this planning process must be documented in a detailed Service Development Plan (SDP) that lays out the overall scope and approach for the proposed service. Individual Projects must be identified through a Service Development Plan, State Rail Plan, or similar planning document that comprehensively analyzes the service improvement needs on a specific corridor.

At a minimum, the planning process for both Service Development Programs and Individual Projects must demonstrate that the project has been identified as the best solution for solving a specific existing transportation problem, and make the case for investing in the proposed solution. In doing so, the planning process must encompass activities such as identifying the purpose and need for the project and analyzing the costs, benefits, and impacts of a range of alternatives for implementing the project.

3.5.2 Operational Independence

All projects that are proposed to be advanced using HSIPR program funding must have operational independence. A project is considered to have operational independence if, upon implementation, it will have tangible and measurable benefits, either independently of other investments or cumulatively with projects selected to receive awards under previous HSIPR program solicitations (*see* Section 3.4.4 for more information about previously-selected projects). Examples of tangible and measurable benefits include operational reliability improvements, travel-time reductions, and additional service frequencies resulting in increased ridership. Additionally, a Service Development Program may demonstrate operational independence by resulting in tangible and measurable progress in implementing new or substantially improved high-speed or intercity passenger rail service.

3.5.3 Availability of Funds

FRA intends to select applications for projects that can promptly proceed to award. Statutorily, FRA must obligate all Recovery Act funds by September 30, 2012. If funding announced under FY 2010 annual appropriations is not obligated within 2 years of the date of the announcement, FRA may redistribute the funds to other HSIPR projects at the FRA Administrator's discretion (49 U.S.C. 24402(h)). Similarly, FRA may require the return of obligated funds that remain unexpended if the grantee is not making satisfactory progress in implementing the project or program as provided for in the cooperative agreement.

3.5.4 Funding Restrictions

In general, only those costs considered allowable pursuant to OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments" (codified at 2 CFR part 225), will be considered for funding.

Additionally, the following funding restrictions will apply to cooperative agreements awarded under this solicitation and must be taken into consideration in the development of budget information submitted as part of an application:

- Funding may not be used for expenses associated with the operation of intercity passenger rail service;
- Funding may not be used for projects that primarily benefit commuter rail passenger transportation;
- Funding may not be used for projects in which the physical improvements are located outside the United States; and
- While there is no cap on a grant recipient's use of grant funds for management and administrative costs, such costs must be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles cited above.

FRA will also consider reimbursement of pre-award costs incurred after the enactment of the applicable appropriations legislation (February 17, 2009, for the Recovery Act or December 16, 2009, for the FY 2010 DOT Appropriations Act). However, such costs will be considered for reimbursement only to the extent that they are otherwise allowable under the applicable cost principles. To the extent such pre-award costs are incurred prior to the date of submission of an application, the application must show in detail what costs have been incurred in order for such costs to be considered for reimbursement. Projects for which construction activities commenced prior to receipt of an FRA environmental determination under NEPA will not be eligible for funding.

Additionally, a grant recipient may not generally expend any of the funds provided in an award on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. 470(f)) (NHPA), and related laws and regulations have been completed and FRA has provided the grant recipient with a written notice authorizing it to proceed.

3.5.5 Standards for Equipment Procurement or Design Grants

If the applicant is seeking a grant for the procurement or design of railroad equipment, the proposed equipment should be consistent with specifications developed by the Next Generation Corridor Equipment Pool Committee. This Committee was established under Section 305 of PRIIA to develop a pool of standardized next-generation rail corridor equipment.

3.5.6 Positive Train Control (PTC)

If, as a component of an investment intended to benefit high-speed or intercity passenger rail service, a project involves installation and/or improvements to railroad signaling/control systems, the application must demonstrate that the proposed improvements are consistent with a comprehensive plan for complying with the requirements for PTC implementation under Section 104 of the Rail Safety Improvement Act of 2008 ("RSIA," Division A of Pub. L. 110–432, October 16, 2008, codified at 49 U.S.C. 20157) and with FRA's final rule on Positive Train Control Systems published in the **Federal Register** on January 15, 2010 (75 FR 2598) and September 27, 2010 (75 FR 59108).

Section 4: Application and Submission Information

4.1 Application Procedures

4.1.1 Applying Online Through GrantSolutions

All applications must be submitted to FRA through GrantSolutions (GS). To access the system, go to *https://www.grantsolutions.gov.* All potential applicants should immediately complete the following three steps, which are required prior to submitting an application through GS. These steps can take up to ten days for the systems/information-owners to process:

- *Register in GS.* Go to *https://www.grantsolutions.gov* and select "Register" on the right side of the page to register, if not previously registered.
- *Obtain a Data Universal Number System (DUNS) number.* All applicants must include a DUNS number in their application. Applications without a DUNS number are incomplete. A DUNS number is a unique nine-digit number recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients and subrecipients. The DUNS number will be used throughout the grant lifecycle. Obtaining a DUNS number is a free, simple, one-time activity. Obtain a number by calling 1–866–705–5177 or by applying online at *http://fedgov.dnb.com/webform/displayHomePage.do.*
- *Register in the Central Contractor Registration (CCR) database.* FRA also requires that all applicants (other than individuals) for Federal financial assistance maintain current registrations in the CCR database. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via *http://www.grants.gov* or GrantSolutions should already be registered with CCR. Please note that applicants must update or renew their CCR registration at least once per year to maintain an active status. Information about registration procedures can be accessed at *http://www.ccr.gov.*

4.1.2 Address To Request Paper Application Package

If Internet access is unavailable, please write to FRA at the address below to request a paper application.

U.S. Department of Transportation, Federal Railroad Administration, Attn: HSIPR Program Information (RPD–10), Mail Stop 20, 1200 New Jersey Avenue, SE., Washington, DC 20590.

4.2 Application Package

Required documents for the application package are summarized in the checklist below.

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Application Checklist

Documents	Project Type		
	Service Development Program	Individual Project	
		FD/ Construction	PE/ NEPA
Application Forms			
1. Narrative			
☐ HSIPR Narrative Application Form – Service Development Program	✓		
☐ HSIPR Narrative Application Form – Individual FD/Construction		✓	
☐ HSIPR Narrative Application Form – Individual PE/NEPA			✓
2. Budget and Schedule			
☐ HSIPR Budget and Schedule Form – Service Development Program	✓		
☐ HSIPR Budget and Schedule Form – Individual Project		✓	
3. OMB			
☐ SF 424: Application for Federal Assistance	✓	✓	✓
☐ SF 424A: Budget Information-Non Construction		✓ *	✓
☐ SF 424B: Assurances-Non Construction		✓ *	✓
☐ SF 424C: Budget Information-Construction	✓	✓ *	
☐ SF 424D: Assurances-Construction	✓	✓ *	
4. FRA Assurances			
☐ FRA Assurances Document	✓	✓	✓
Supporting Documentation			
5. Project Development			
☐ Project Planning Documentation	✓	✓	✓
☐ Service NEPA Documentation	✓		
☐ Project NEPA Documentation	Optional	✓	
☐ Preliminary Engineering (PE) Documentation	Optional	✓	
6. Project Delivery			
☐ Project Management Documentation	✓	✓	✓

Documents	Project Type		
	Service Development Program	Individual Project	
		FD/ Construction	PE/ NEPA
☐ Financial Planning Documentation	✓	✓	✓
☐ System Safety Planning Documentation	✓	✓	
☐ Railroad and Project Sponsor Agreements	✓	✓	✓

* If an FD/Construction project includes construction activities, the SF-424C and SF-424D forms are required. If an FD/Construction project is comprised of non-construction activities only (such as equipment procurement), the SF-424A and SF-424B forms are required.

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Applicants must complete and submit all components of the application package; failure to do so may result in the application being removed from consideration for award. All components of the application package must be submitted through GrantSolutions (including optional supporting documentation), as described in Section 4.1.1. For any other documentation required prior to award that is not specified in this notice, FRA will make individual arrangements with applicants for the submission of the required documentation.

Program-specific forms and requirements for supporting documentation may be downloaded from FRA's Web site at *http://www.fra.dot.gov/rpd/passenger/477.shtml.* Specific instructions for completing these forms can be found within each document. Further information regarding the required supporting documentation may be found with the relevant application forms.

Standard OMB forms will be available electronically on the Funding Opportunity page at *http://www.GrantSolutions.gov.* The Funding Opportunity screen provides applicants with general announcement information and access to these required application materials. In addition, applicants can apply online through this screen.

The FRA Assurances document can be obtained from FRA's Web site at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.* The document should be signed by an authorized certifying official for the applicant, scanned into electronic format, and submitted through GrantSolutions.

4.2.1 Application Phasing

It is in the best interest of each applicant—particularly those submitting an application for a Service Development Program that is exceptionally complex, long-term, or broad in scope—to recognize the limited funding available. Therefore, an application's competitiveness may be improved by demonstrating how a proposed project could be divided into discrete phases, each with operational independence, based on geographic section, type of activity, discrete benefits and costs, or other appropriate criteria. Applicants pursuing this option should submit a single application that identifies the discrete phases, component projects, and resulting benefits of each phase. This approach will provide FRA the flexibility to select for funding those phases that are sufficiently developed to realize significant benefits, rather than selecting or not selecting the entire project based on insufficient development of some constituent parts.

4.2.2 Optional Supporting Documentation

To support the application, FRA welcomes the submission of other relevant and available supporting documentation that may have been developed by the applicant. The format and structure of any optional supporting documents is at the discretion of the applicant. Optional supporting documentation may be provided one of two ways: (1) As attachments to the application or (2) in hard copy to the address in Section 4.5 for materials that cannot otherwise be provided electronically. Applicants should provide notification of any documentation being submitted in hard copy in the appropriate section of the HSIPR Narrative Application Form.

4.3 Submission Dates and Times

Applications for these funds must be submitted through GrantSolutions by 8 p.m. EDT on Monday, April 4, 2011.

4.4 Intergovernmental Review

This program has not been designated as subject to Executive Order 12372 pursuant to 49 CFR part 17.

4.5 Other Submission Information

As detailed in Section 4.1.1, all application materials, including supporting documentation, should be submitted through GrantSolutions. Should an applicant encounter technological difficulties using the GrantSolutions system, please contact the GrantSolutions Help Desk at 1–866–577–0771 or via e-mail at *help@grantsolutions.gov.* If the applicant experiences technological issues that may cause the applicant to miss the application deadline, the applicant must contact FRA at *HSIPR@dot.gov* immediately, and prior to the application deadline, to request consideration to submit the application after the deadline. FRA staff may ask the applicant to e-mail the complete grant application, the DUNS number, and provide a GrantSolutions Customer Support tracking number(s). After FRA reviews all of the information submitted and contacts the GrantSolutions Customer Support to validate the technical issues reported, FRA will contact the applicant to either approve or deny the request to submit a late application. If the issues reported cannot be validated, the application may be rejected as untimely. For applications submitted by e-mail, the applicant should print, sign, scan into electronic format (preferably Adobe Portable Document Format (.pdf)), and attach to the submission e-mail copies

of all application forms requiring the applicant's signature.

For optional supporting documentation that an applicant is unable to submit electronically (such as oversized engineering drawings), an applicant may submit an original and two copies to the address below. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

U.S. Department of Transportation, Federal Railroad Administration, Attn: HSIPR Program Information (RPD–10) Room 38–302, Mail Stop 20, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Section 5: Application Review Information

5.1 Application Review and Selection

Complete applications are due by 8 p.m. EDT on Monday, April 4, 2011. Applications will proceed through a three-part review process:

1. Screening for completeness and eligibility;
2. Review of eligible applications by technical panels applying evaluation criteria; and
3. Project selection by the FRA Administrator applying additional selection criteria.

Each application will first be screened for completeness (containing all required documentation outlined in Section 4.2) and eligibility (requirements outlined in Section 3). Eligible and complete applications will then be reviewed and assessed against the evaluation criteria outlined in Section 5.2. Due both to statutory requirements and the overall objectives of the Recovery Act, FRA intends to select projects that can promptly proceed to award. As such, the evaluation criteria, ranked in order of priority, are:

1. Project Readiness.
2. Public Benefits.
3. Project Delivery Approach.
4. Sustainability of Benefits.

The ratings assigned for the four evaluation criteria above will not in themselves constitute the final award determination. The agency will also take into consideration several cross-cutting and comparative selection criteria (*see* Section 5.3) to determine awards. In accordance with 49 U.S.C. 24402(c), FRA may also consider "other relevant factors as determined by the Secretary" of Transportation.

For applications for funding for Service Development Programs or FD/Construction activities, the project readiness, benefit, delivery, and cross-cutting and comparative criteria will be applied to the proposed projects. For applications for funding for PE/NEPA completion, these criteria will be applied to the underlying projects that will be the subject of PE/NEPA development, except where explicitly indicated.

5.2 Evaluation Criteria

5.2.1 Project Readiness

The following factors will be considered in assessing the readiness of the proposed project to proceed promptly to award:

- The applicant's progress, at the time of application, in reaching compliance with NEPA for the proposed project. Although a NEPA decision document (Record of Decision, Finding of No Significant Impact, Categorical Exclusion determination) is not required at the time of application, applications for Service Development Programs and Individual FD/Construction Projects that are accompanied by a final NEPA determination will be looked upon favorably during the application review and selection process;
- The applicant's progress, at the time of application, in reaching final service outcomes agreements (where necessary) with key project partners. Applicants that own and/or control the infrastructure to be improved by the project or have a service outcomes agreement in place with the infrastructure owning railroad for the proposed project, or an executed agreement that could be amended with the infrastructure owning railroad for a project(s) located on the same corridor as the proposed project, will be looked upon favorably during the application review and selection process; and
- The quality and completeness of the project's Statement of Work (included in the HSIPR Narrative Application Form), including whether the Statement of Work provides a sufficient level of detail regarding scope, schedule, and budget to immediately advance the project to award.

5.2.2 Public Benefits

Economic analysis that quantifies and demonstrates the monetary value of user benefits and, if available, broader public benefits will be particularly relevant to FRA in evaluating applications. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments. FRA may consider benefits and costs using standard data provided by applicants and will evaluate applications in a manner consistent with Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233 (January 31, 1994).

Evaluation against the public benefits criterion will consider the qualitative factors outlined below, as supported by key quantitative metrics.

5.2.2.1 Transportation Benefits

The following factors will be considered in assessing a proposed project's achievement of transportation benefits:

- Generating improvements to existing high-speed and intercity passenger rail service, as reflected by estimated increases in ridership, increases in operational reliability, reductions in trip times, additional service frequencies to meet anticipated or existing demand, and other related factors;
- Generating cross-modal benefits, including anticipated favorable impacts on air or highway traffic congestion, capacity, or safety, and cost avoidance or deferral of planned investments in aviation and highway systems;
- Creating an integrated high-speed and intercity passenger rail network;
- Encouragement of intermodal connectivity and integration, including a focus on convenient connection to local transit and street networks, as well as coordination with local land use and station area development;
- Ensuring a state of good repair of key intercity passenger rail assets;
- Promoting standardized rolling stock, signaling, communications, and power equipment;
- Improved freight or commuter rail operations, in relation to proportional cost-sharing (including donated property) by those other benefiting rail users;
- Equitable financial participation from benefiting entities in the project's financing;
- Encouragement of the implementation of positive train control (PTC) technologies (with the understanding that 49 U.S.C. 20147 requires all Class I railroads and entities that provide regularly scheduled intercity or commuter rail passenger services to fully institute interoperable PTC systems by December 31, 2015); and
- Incorporating private investment in the financing of capital projects or service operations.

5.2.2.2 Other Public Benefits

The following factors will be considered in assessing the proposed

project's achievement of other public benefits:

• The extent to which the project is expected to create and preserve jobs and stimulate increases in economic activity;

• Promoting environmental quality, energy efficiency, and reduction in dependence on oil, including the use of renewable energy sources, energy savings from traffic diversions from other modes, employment of green building and manufacturing methods, reductions in key emissions types, and the purchase and use of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment; and

• Promoting coordination between the planning and investment in transportation, housing, economic development, and other infrastructure decisions along the corridor, as identified in the six livability principles developed by DOT with the Department of Housing and Urban Development and the Environmental Protection Agency as part of the Partnership for Sustainable Communities, which are listed fully at *http://www.dot.gov/affairs/2009/dot8009.htm.*

5.2.3 Project Delivery Approach

The following factors will be considered in assessing the risk associated with the proposed project's delivery within budget, schedule, and as designed (for applications to complete PE/NEPA documentation, the following factors will be applied to the proposed PE/NEPA development activities rather than to the underlying project):

• The timeliness of project completion and the realization of the project's benefits;

• The applicant's financial, legal, and technical capacity to implement the project;

• The applicant's experience in administering similar grants and projects;

• The soundness and thoroughness of the cost methodologies, assumptions, and estimates;

• The thoroughness and quality of the Project Management Plan;

• The timing and amount of the project's future noncommitted investments;

• The adequacy of any completed engineering work to assess and manage/mitigate the proposed project's engineering and constructability risks (does not apply to PE/NEPA projects); and

• The sufficiency of system safety and security planning (does not apply to PE/NEPA projects).

5.2.4 Sustainability of Benefits

The following factors will be considered in assessing the likelihood of realizing the proposed project's benefits:

• The applicant's financial contribution to the project;

• The quality of a Financial Plan that analyzes the financial viability of the proposed rail service;

• The quality and reasonableness of revenue, operating, and maintenance cost forecasts;

• The availability of any required operating financial support, preferably from dedicated funding sources;

• The quality and adequacy of project identification and planning;

• The reasonableness of estimates for user and non-user benefits for the project; and

• The reasonableness of the operating service plan.

5.3 Selection Criteria

The FRA Administrator will also use the criteria below to further ensure that the projects selected for funding will advance key priorities for the development of high-speed and intercity passenger rail and contribute positively to the success and sustainability of the HSIPR program.

5.3.1 Fulfillment of DOT Strategic Goals

• Improving transportation safety.

• Maintaining transportation infrastructure in a state of good repair.

• Promoting economic competitiveness.

• Fostering livable communities.

• Advancing environmentally sustainable transportation policies.

5.3.2 Region/Location

• Ensuring appropriate level of regional balance across the country.

• Ensuring consistency with national transportation and rail network objectives.

• Ensuring integration with other rail services and transportation modes.

5.3.3 Innovation/Resource Development

• Pursuing new rail technologies that result in favorable public return on investment and ensure delivery of project benefits.

• Promoting innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance.

• Advancing the state of the art in modeling techniques for assessing costs and benefits.

• Promoting domestic manufacturing, supply, and industrial development.

• Developing professional railroad engineering, operating, planning, and management capacity.

5.3.4 Partnerships/Participation

• Where corridors span multiple States, emphasizing those that have organized multi-State partnerships with joint planning and prioritization of investments.

• Where Amtrak is the applicant, considering the partnerships with and/or demonstrated support for the project by entities authorized to plan, design, construct, operate, maintain and/or finance intercity or high-speed passenger rail in the affected States.

• Employing creative approaches to ensure workforce diversity and use of disadvantaged and minority business enterprises.

• Engaging local communities and other stakeholder groups in the project.

5.3.5 Project Delivery/Integration

• Assessing the applicant's means for achieving satisfactory continuing control over project assets in a timely manner, including, but not limited to, public ownership of project assets or service outcomes agreements with railroad operator(s) and infrastructure-owning railroad(s) at the time of application.

• Assessing the quality and completeness of the Statement of Work (included in the HSIPR Narrative Application Form), including whether the Statement of Work provides a sufficient level of detail regarding scope, schedule, and budget to immediately advance the project to award;

• Assessing how a proposed project would complement previous awards made under the HSIPR or related programs.

• Assessing how the proposed project would complement previous State investments in high-speed intercity passenger rail.

• Assessing the applicant's track record in sustainable funding and project delivery, both within the HSIPR program and other Federal financing programs.

Section 6: Award Administration Information

6.1 Award Notices

Applications selected for funding will be announced after the application review period. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. Notification of a selected

application is not an authorization to begin proposed project activities.

6.2 Administrative and National Policy Requirements

The provisions of this section apply to grant recipients of the HSIPR program.

6.2.1 Contracting Information

A grant recipient's procurement of goods and services must comply with the Procurement Standards requirements set forth at 49 CFR 18.36 or 49 CFR 19.40 through 19.48, whichever is applicable depending on the type of grantee (part 18 covers State and local governments and part 19 covers non-profit and for-profit entities), and with applicable supplementary U.S. DOT or FRA directives or regulations.

6.2.2 Compliance With Federal Civil Rights Laws and Regulations

The grant recipient must comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) (as implemented by 49 CFR part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 1601–1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental, or financing of housing, (i) 49 U.S.C. 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the grant recipient. Grant recipients must comply with all regulations, guidelines, and standards adopted under the above statutes. The grant recipient is also required to submit information, as required, to the FRA Office of Civil Rights concerning its compliance with these laws and implementing regulations and its activities implementing a grant award.

6.2.3 Disadvantaged Business Enterprises (DBE)

The grant recipient will be required to provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses and implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from the activities funded under the HSIPR program. The DOT Disadvantaged Business Enterprises (DBE) regulation (49 CFR part 26) applies only to certain categories of Federal highway, Federal transit, and airport funds, however, incorporating key elements of this DBE program in contracts awarded by grant recipients under the HSIPR program would be an excellent example of a best practice for ensuring that all individuals, regardless of race, gender, age, disability, and national origin, benefit from the program. The grant recipient will be required to provide FRA with a plan for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals and to submit information to the FRA Office of Civil Rights concerning its activities with respect to DBEs in implementing a grant award.

6.2.4 Assurances and Certifications

Upon acceptance of the grant by FRA, all certifications and assurances provided by the grant recipient through the application process are incorporated in and become part of the cooperative agreement. Applicable forms include SF 424(A)/(B), SF 424(C)/(D), and FRA's Assurances and Certification form. The OMB Standard Forms can be accessed at *http://www.forms.gov.* The FRA Assurances and Certifications Document is available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.*

6.2.5 Debarment and Suspension; and Drug-Free Workplace

Grant recipients must obtain certifications on debarment and suspension for all third party contractors and subgrantees and comply with all DOT regulations, "Nonprocurement Suspension and Debarment" (2 CFR part 1200), and "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (49 CFR part 32).

6.2.6 Safety Oversight

Grant recipients must comply with any Federal regulations, laws, policy, and other guidance that FRA or DOT may issue pertaining to safety oversight in general and in the performance of any grant award in particular. FRA has in place a comprehensive system of railroad safety oversight (*see* 49 CFR part 209 *et seq.*) that is applicable to railroad operations generally.

6.2.7 Americans With Disabilities Act (ADA)

Grant recipients must agree to use funds provided under the cooperative agreement in a manner consistent with the requirements of Title II of the Americans with Disabilities Act (ADA) of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and both statutes' implementing regulations at 49 CFR parts 27, 37, and 38. DOT (through its delegate FRA) has responsibility to offer technical assistance for the provisions of the ADA about which it issues regulations. 42 U.S.C. 12206(c)(1) reads: "Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapters of this chapter for which such agency has responsibility." Grant recipients are strongly encouraged to seek FRA's technical assistance with regard to the accessible features of passenger rail systems, to include accessibility at stations and on railcars. FRA believes such technical assistance is essential where interpretation of DOT's regulatory requirements is necessary and/or before the creation of any new rail system.

6.2.8 Environmental Protection

All facilities that will be used to perform work under an award shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, State, and Federal standards.

Grant recipients will conduct work under an award and will require that work that is conducted as a result of an award be in compliance with the following provisions, as modified from time to time: Section 114 of the Clean Air Act, 42 U.S.C. 7414, and Section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. Through the cooperative agreement, grant recipients will certify that no facilities that will be used to perform work under an award are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). Grant recipients will be required to notify the FRA Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to an award is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the grant recipient's duty of notification shall extend only to those communications of which it is aware, or should reasonably have been aware. Grant recipients will need to include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds $50,000.00 in connection with work performed pursuant to an award, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the grant recipient upon the receipt of a communication from the EPA concerning the matters set forth herein.

6.2.9 National Environmental Policy Act (NEPA)

The following is a description of FRA's standard grant provisions on NEPA compliance.

Generally, grant recipients may not expend any of the funds provided in an award on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. 470(f)) (NHPA), and related laws and regulations have been completed and FRA has provided the grant recipient with a written notice authorizing them to proceed.

In instances where NEPA approval has not been secured at the time of grant award, grant recipients are required to assist FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 CFR part 1500 *et seq.*), FRA's "Procedures for Considering Environmental Impacts" (45 FR 40854, June 16, 1980, as revised May 26, 1999, 64 FR 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under an award, grant recipients may be required to conduct certain environmental analyses and to prepare and submit to FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).

No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials shall be used by grant recipients without the prior written concurrence of FRA. Grant recipients shall assist FRA in complying with these requirements of 49 U.S.C. 303(c).

6.2.10 Environmental Justice

The grant recipient will be required to agree to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. 4321 note, except to the extent that FRA determines otherwise in writing.

6.2.11 Operating and Access Agreements

Grant recipients will be required to reach a written agreement, approved by FRA, with each of the railroads or other entity on whose property the project will be located showing that the recipient will have satisfactory continuing control over the use of the equipment and facilities necessary to implement the project and the capability and willingness to maintain the equipment and facilities. Among other things, such railroad/owner agreements shall specify terms and conditions regarding the following issues: Responsibility for project design and implementation, project property ownership, maintenance responsibilities, and disposition responsibilities, and the owning entity's commitment to achieve, to the extent it has control, the anticipated project benefits. If an agreement between the grant recipient and the owner that substantially addresses the above-referenced issues is already in place as of the date of execution of the cooperative agreement, the grant recipient will be required to submit it to FRA for FRA's review and determination of adequacy. However, if either no agreement is in place as of the date of execution of this Agreement, or if an existing agreement has been determined by FRA to be inadequate, the grant recipient shall, prior to the grant recipient's execution of an agreement with the owner, submit the final draft of such an agreement to FRA for FRA's review and approval. A finding by FRA that the required approved railroad/owner agreement(s) are in place is a prerequisite for the obligation of funding for construction-related activities.

6.2.12 Real Property and Equipment Management, Discontinuance of Service, and Disposition Requirements

The grant recipient will be required to ensure the maintenance of project property to the level of utility (including applicable FRA track safety standards) that existed when the project improvements were placed in service for a period of a minimum of 20 years from the date such project property was placed in service. In the event that all intercity passenger rail service making use of the project property is discontinued during the 20-year period, the grant recipient will be required to continue to ensure the maintenance of the project property, as set forth above, for a period of one year to allow for the possible reintroduction of intercity passenger rail service. In the event the grant recipient should fail to ensure the maintenance of project property, as set forth above, for a period of time in excess of six months, the grant recipient will be required to refund to FRA a pro-rata share of the Federal contribution, based upon the percentage of the 20-year period remaining at the time of such original default.

The grant recipient will also be required to acknowledge that the purpose of the project is to benefit intercity passenger rail service. In the event that all intercity passenger rail service making use of the project property is discontinued (for any reason) at any time during a period of 20 years from the date such project property was placed in service, as set forth above, and if such intercity passenger rail service is not reintroduced during a one-year period following the date of such discontinuance, the grant recipient will be required to refund to FRA, no later

than 18 months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the 20-year period remaining at the time of such discontinuance.

6.2.13 Freedom of Information Act (FOIA)

As a Federal agency, FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applications and related materials submitted by applicants pursuant to this notice of funding availability would become agency records and thus subject to the FOIA and to public release through individual FOIA requests. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this notice could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions, most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (*see National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (DC Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying their request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 CFR 209.11. As noted in the Department's FOIA implementing regulation (49 CFR part 7), the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (*see* 49 CFR 7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with FRA.

6.2.14 Security Planning and Oversight

The grant recipient must comply with any Federal regulations, laws, policy, and other guidance that FRA, DOT, or the Department of Homeland Security may issue pertaining to security oversight in general and that FRA or DOT may issue regarding the performance of any grant award in particular. Prior to FRA issuing a cooperative agreement for a Service Development Program or an Individual FD/construction project, an applicant must complete a System Security Plan.

6.2.15 Project Labor Agreements

Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects, issued by President Obama on February 6, 2009, encourages Federal agencies in awarding any contract in connection with large-scale Federal government construction projects to, on a project-by-project basis, consider requiring the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law. At this time, the Executive Order does not apply directly to recipients of financial assistance to either require or preclude the use of a project labor agreement.

6.2.16 Distracted Driving Safety Policy

Grant recipients are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. *See* Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at *http://edocket.access.gpo.go/2009/E9–24203.htm*) and DOT Order 3902.1 "Text Messaging While Driving", Dec. 30, 2009 (available at *http://dotnet.gov.gov*), as implemented by Financial Assistance Policy Letter (No. FAP–2010–01, Feb. 2, 2010). This includes, but is not limited to, Grant recipients:

(1) Considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;

(2) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving;

(3) Encouraging voluntary compliance with the agency's text messaging policy while off duty.

6.3 Program-Specific Grant Requirements

6.3.1 Buy America

Grant recipients must comply with the Buy America provisions set forth in 49 U.S.C. 24405(a), which specifically provide that the Secretary of Transportation may obligate funds for a HSIPR project only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary (or the Secretary's delegate, the FRA Administrator) may waive this requirement if the Secretary finds that applying this requirement would be inconsistent with the public interest; the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material will increase the cost of the overall project by more than 25 percent. For purposes of implementing these requirements, in calculating the components' costs, labor costs involved in final assembly shall not be included in the calculation. If the Secretary determines that it is necessary to waive the application of the Buy America requirements, the Secretary is required before the date on which such finding takes effect to publish in the **Federal Register** a detailed written justification as to why the waiver is needed; and provide notice of such finding and an opportunity for public comment on such finding, for a reasonable period of time, not to exceed 15 days. The Secretary may not make a waiver for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection, and the government of that foreign country has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies. The Buy America requirements described in this section shall only apply to projects for which the costs exceed $100,000.

6.3.2 Operators Deemed Rail Carriers

With the exception of entities falling within the exclusions set forth in 49 U.S.C. 24405(e), a person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this program shall be considered a rail carrier, as defined in 49 U.S.C. 10102(5), for purposes of title 49 of the United States Code and any other statute that adopts the definition found in 49 U.S.C. 10102(5), including the Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.*); the Railway Labor Act (43 U.S.C. 151 *et seq.*); and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*) (*see* 49 U.S.C. 24405(b)).

6.3.3 Railroad Agreements

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient shall have in place a written agreement between the grant recipient and the railroad regarding such use and ownership, including (a) any compensation for such use; (b) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; (c) an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and (d) an assurance that the grant recipient complies with liability requirements consistent with 49 U.S.C. 28103. 49 U.S.C. 24405(c). Applicants shall also provide assurance that it has or will have the legal, financial and technical capacity to carry out the project, including, but not limited to, public ownership of necessary equipment and facilities or access agreements with railroad operator(s) and infrastructure-owning railroads evidencing that the grant recipient will have continued access to necessary equipment and facilities. 49 U.S.C. 24402(b). Applicants should further provide assurance that service outcomes specified to result from the project, and for which the railroad is necessary for delivery, will be delivered, including a mechanism to enforce the specified service outcomes. 49 U.S.C. 24402(c).

6.3.4 Labor Protection

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient must agree to comply with the standards of 49 U.S.C. 24312, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. 24308(a) and the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this program (*see* 49 U.S.C. 24405(c)).

6.3.5 Davis-Bacon Act

Projects funded through the Recovery Act and all projects funded through PRIIA that use rights-of-way owned by a railroad are required to comply with the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) as provided for in 49 U.S.C. 24405(c)(2). The Davis-Bacon Act is a measure that fixes a floor under wages on Federal government projects and provides, in pertinent part, that the minimum wages to be paid for classes of workers under a contract for the construction, alteration, and/or repair of a Federal public building or public work must be based upon wage rates determined by the Secretary of Labor to be prevailing for corresponding classes of workers employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed.

6.3.6 Replacement of Existing Intercity Passenger Rail Service

Grant recipients providing intercity passenger rail transportation that begins operations after October 16, 2008, on a project funded in whole or in part by grants made under this program and that replaces intercity passenger rail service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity as of such date, are required to enter into a series of agreements with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider (*see* 49 U.S.C. 24405(d)).

6.4 Reporting

6.4.1 Standard Reporting Requirements

• *Progress Reports*—Progress reports are to be submitted quarterly. These reports must relate the state of completion of items in the statement of work to expenditures of the relevant budget elements. The grant recipient must furnish the quarterly progress report to FRA on or before the 30th calendar day of the month following the end of the quarter being reported. Grantees must submit reports for the periods: January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. Each quarterly report must set forth concise statements concerning activities relevant to the project and should include, but not be limited to, the following: (a) An account of significant progress (findings, events, trends, *etc.*) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by FRA, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.

• *Quarterly Federal Financial Report (SF–425)*—Grantees must submit a quarterly Federal financial report on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported (*e.g.,* for quarter ending March 31, the SF–425 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. Grantees must use SF–425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

• *Interim Report(s)*—If required, interim reports will be due at intervals specified in the statement of work and must be submitted electronically in the GrantSolutions system.

• *Final Report(s)*—Within 90 days of the project completion date or termination by FRA, grantees must submit a Summary Project Report, detailing the results and benefits of the grantee's improvement efforts, as well as a final Federal Financial Report (SF–425).

6.4.2 Audit Requirements

Grant recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/*

ybk01.htm, and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Currently, audit reports must be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, FRA and the Comptroller General of the United States must have access to any books, documents, and records of grant recipients for audit and examination purposes. The grant recipient will also give FRA, DOT's Office of the Inspector General, or the Comptroller, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the grant. Grant recipients must require that subgrantees comply with the audit requirements set forth in OMB Circular A–133. Grant recipients are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

6.4.3 Monitoring Requirements

Grant recipients will be monitored periodically by FRA to ensure that the project goals, objectives, performance requirements, timelines, milestones, budgets, and other related program criteria are being met. FRA will conduct monitoring activities through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, including sub-awards and subgrantees, to provide reasonable assurance that the award is being administered in compliance with Federal requirements. Financial monitoring responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

6.4.4 Closeout Process

Project closeout occurs when all required project work and all administrative procedures described in 49 CFR part 18, or 49 CFR part 19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout should not invalidate any continuing obligations imposed on the grantee by an award or by FRA's final notification or acknowledgment. Within 90 days of the Project completion date or termination by FRA, grantees agree to submit a final Federal Financial Report (SF–425), a certification or summary of project expenses, a final report, and third party audit reports, as applicable.

6.5 ARRA-Specific Grant Requirements (Applies to ARRA–Funded Grants Only)

ARRA contains several specific requirements associated with funding provided in that statute. These include:

6.5.1 Prohibited Activities

None of the ARRA funds appropriated or otherwise made available in the cooperative agreement may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

6.5.2 Certifications

As a condition of award, to the extent applicable, grant recipients must comply with the Certification requirements of ARRA. These include Section 1201 (Maintenance of Effort); Section 1511 (Transparency and Oversight); and Section 1607 (Additional Funding Distribution and Assurance of Appropriate Use of Funds).

6.5.3 Whistleblower Protections

The grant recipient will be required to provide the whistleblower protections required by Section 1553 of ARRA.

6.5.4 False Claims Act

The grant recipient and sub-recipients will be required to promptly refer to the DOT's Inspector General credible evidence that a principal, employee, agency, contractor, sub-contractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

6.5.5 Contracting Provisions

To the maximum extent possible, contracts funded under ARRA shall be awarded as fixed-price contracts through the use of competitive procedures. Grant recipients will be required to provide a summary of any contract awarded with ARRA funds that is not fixed-price and not awarded using competitive procedures for posting on the Recovery Accountability and Transparency Board's Web site.

6.5.6 ARRA-Specific Reporting Requirements

ARRA Section 1201 Report— Periodic Reports—Each grant recipient will be required to submit periodic reports to the FRA as described in this paragraph not later than February 17, 2012. The Periodic Reports shall include information describing: (1) The amount of Federal funds appropriated, allocated, obligated, and outlayed under the cooperative agreement; (2) the number of projects that have been put out to bid under the cooperative agreement and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded under the cooperative agreement and the amount of Federal funds associated with such contracts; (4) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts; (5) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; and (6) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the cooperative agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment since February 17, 2009. DOT or FRA may issue additional guidance on the preparation and submission of Periodic Reports.

Section 1512(c)—Jobs Accountability Reports—Not later than 10 days after the end of each quarter, each grant recipient will be required to submit a Jobs Accountability Report to the FRA that contains: (1) The total amount of ARRA funds received pursuant to this agreement; (2) the amount of ARRA funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which ARRA funds were expended or obligated, including—(A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) detailed information on any subcontracts or subgrants awarded by the grant recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals,

as prescribed by the Director of OMB. OMB may issue additional guidance on the preparation and submission of Jobs Accountability Reports. The grant recipient must also register with the CCR database or complete other registration requirements as determined by the Director of OMB.

Section 1609: Environmental Reporting—Section 1609(c) of ARRA requires that Federal agencies report via the President (specifically, to the White House Council on Environmental Quality) every 90 days following enactment of ARRA on the status of projects funded under ARRA with respect to compliance with NEPA. Grant recipients may be requested to submit information to assist FRA in completing this report.

Additional Information—To satisfy the purposes of ARRA, grant recipients may be required to provide additional information in response to requests from OMB, the Congressional Budget Office, the Government Accountability Office, or the Department's Inspector General. FRA will inform grant recipients if and when such additional reports or information are required.

Section 7: Agency Contact

For further information regarding this notice and the HSIPR program, please contact the FRA HSIPR Program Manager via e-mail at *HSIPR@dot.gov,* or by mail: U.S. Department of Transportation, Federal Railroad Administration, MS–20, 1200 New Jersey Avenue, SE., Washington, DC 20590 Attn: HSIPR Program.

Issued in Washington, DC, on March 11, 2011.

Joseph C. Szabo,

Administrator.

[FR Doc. 2011–6178 Filed 3–14–11; 11:15 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Buy America Waiver Notification

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: This notice provides information regarding MARAD's finding that a Buy America waiver, stated in 41 U.S.C. 10b, is appropriate for the purchase of foreign Mobile Harbor Cranes in the Federal-aid/TIGER II grant for the Port of Providence. The waiver for this project involves the purchase and use of specific items that are not produced in the United States and deemed necessary for the construction of the project. MARAD has reached out to industry on the domestic availability of these items. No domestic manufacturers have been located.

The Port of Providence's TIGER II project is to expand and upgrade the Port of Providence in Rhode Island. TIGER II dollars in the amount of $10.5 million will help replace two aged diesel cranes, one of which is currently non-functional, with new electric, barge-based cranes that will enable the Port to handle container traffic. Replacing these cranes will allow the port to expand its container short sea shipping operation, help relieve bottlenecks along the I–95 corridor, and support jobs in and around the economically distressed are of Providence.

This waiver is being requested because mobile harbor cranes are not produced in the United States. These cranes are considered to be specialized equipment and other types of cranes cannot be adapted to meet the mobility, lift, precision, and efficiency requirements necessary for marine cargo operations at the Port of Providence. MARAD has consulted and coordinated directly with appropriate industry associations and has determined that it has been more than 15 years since cranes of this type were manufactured in the United States. It should also be noted, the purchase of foreign built cranes to complete this, and other port development projects, is only one part of the overall port modernization and expansion effort. All other materials used in the construction of all port construction projects will be produced in the United States, and MARAD has been working with the Manufacturing Extension Partnership, under the National Institute of Standards and Technology, to identify manufacturing opportunities for domestic harbor crane construction and repair.

DATES: The effective date of the waiver is March 17, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Anthony Shuler Jr., MARAD Office of Infrastructure Development and Congestion Mitigation, (202) 366–6639, or via e-mail at *Anthony.L.Shuler@dot.gov.* For legal questions, please contact Jeff Vogel, MARAD, Office of the Chief Counsel, (202) 493–0307 or via e-mail at *Jeff.Vogel@dot.gov .*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Congress has enacted a Buy American provision which requires manufactured goods that are permanently incorporated into a project that is funded with Federal-aid funds to be produced in the United States. The application of Buy American is triggered by the obligation of Federal funds to a project. Once Federal-aid funds are obligated to a project, then all steel or manufactured goods incorporated into the project must be produced in the United States. The specific statutory requirement reads as follows:

> Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be in the United States, shall be acquired for public use. 41 U.S.C. 10a.

Under 41 U.S.C. 10b, the Secretary may waive the Buy American requirements for specific articles, materials, or supplies on a Federal-aid construction project when with respect to those articles, materials, or supplies it is impracticable to require adherence with the Buy American Act or such a requirement would unreasonably increase the project cost.

The waiver process is initiated by the requesting organization when it believes that a waiver is warranted pursuant to any of the waiver provisions under 41 U.S.C. 10b. MARAD develops findings and justifications for the waiver and publishes the decision in the **Federal Register**. MARAD's publication of its Buy American decision is required pursuant to the Buy American Act, 41 U.S.C. 10b. The effective date of the waiver is the date following publication of the **Federal Register**.

Authority: 41 U.S.C. 10a.

By Order of the Maritime Administrator.

Dated: March 10, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–6103 Filed 3–15–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 10, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 2011 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0044.

Type of Review: Revision of a currently approved collection.

Title: Notice of Change in Status of Plant.

Abstract: The notice is necessary to show the use of the distilled spirits plant (DSP) premises for other activities or by alternating proprietors. It describes proprietor's use of plant premises and other information to show that the change in plant status is in conformity with laws and regulations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1513–0050.

Type of Review: Extension without change of a currently approved collection.

Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

Form: TTB F 5110.50.

Abstract: TTB F 5110.50 is the bond to secure payment of excise taxes on distilled spirits shipped from Puerto Rico to the U.S. on deferral of the tax. The form identifies the principal, the surety, purpose of bond, and allocation of the penal sum among the principal's locations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10 hours.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005; (202) 453–2097.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–6115 Filed 3–15–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 10, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0200.

Type of Review: Revision of a currently approved collection.

Title: Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans.

Form: 5307.

Abstract: This form is filed by employers or plan administrators who have adopted a prototype plan approved by the IRS National Office or a regional prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under IRC sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,139,000 hours.

OMB Number: 1545–1083.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–399–88 (TD 8483) Treatment of Dual Consolidated Losses.

Abstract: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,620 hours.

OMB Number: 1545–1384.

Type of Review: Revision of a currently approved collection.

Title: Taxpayer Statement Regarding Refund.

Form: 3911.

Abstract: If taxpayer inquires about their non-receipt of refund (or lost or stolen refund) and the refund has been issued, the information and taxpayer signature are needed to begin tracing action.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1,660 hours.

OMB Number: 1545–1394.

Type of Review: Revision of a currently approved collection.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Form: 1120–SF.

Abstract: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Respondents: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 26,310 hours.

OMB Number: 1545–1423.

Type of Review: Extension without change of a currently approved collection.

Title: PS–106–91, (TD 8563) State Housing Credit Ceiling and other Rules Relating to the Low-Income Housing Credit.

Abstract: This document contains final regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code. The regulations provide rules relating to the order in which housing credit dollar amounts are allocated from each State's housing credit ceiling under section 42(h)(3)(C) and the determination of which States qualify to receive credit

from a national pool of credit under section 42(h)(3)(D). The regulations affect State and local housing credit agencies and taxpayers receiving credit allocations, and provide them guidance for complying with section 42. The final regulations also amend § 1.42–5 to provide a cross reference to section 42(g)(8)(B).

Respondents: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 275 hours.

OMB Number: 1545–1471.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209626–93 (TD 8796) Notice, Consent, and Election Requirements under Sections 411(a)(11) and 417.

Abstract: Regulation section 1.411(a)-11(c) provides that a participant's consent to a distribution under code section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Regulation section 1.417(e)-1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights under Code section 417(a)(3).

Respondents: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 8,333 hours.

OMB Number: 1545–1476.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–3–95 (TD 8687) Source of Income from Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.

Abstract: The information requested is necessary for the Service to audit taxpayers' returns to ensure taxpayers have properly determined the source of income from sales of inventory produced in one country and sold in another.

Respondents: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1,125 hours.

OMB Number: 1545–1637.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106177–98(TD 8845) Adequate Disclosure of Gifts.

Abstract: The information requested in regulation section 301.6501(c)-1(f) (2) that must be provided on a gift tax return is necessary to give the IRS a complete and accurate description of the transfer in order to begin the running of the statute of limitations on the gift. Prior to the expiration of the statute of limitations, a gift tax may be assessed and the value may be adjusted in order to determine the value of prior taxable gifts for estate and gift tax purposes.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1925.

Type of Review: Extension without change of a currently approved collection.

Title: REG–125628–01 (TD 9243) Revision of Income Tax Regulations under Sections 358, 367, 884, and 6038B Dealing with Statutory Mergers or Consolidations Under Section 368(a)(1)(A) involving One or More Foreign Corporations, and Guidance Necessary To Facilitate Business Electronic Filing Under Section 6038B.

Abstract: The regulations provide rules regarding the merger or consolidation of domestic or foreign corporations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1545–2095.

Type of Review: Extension without change of a currently approved collection.

Title: REG–139236–07—Measurement of Assets and Liabilities for Pension Funding Purposes.

Abstract: These final regulations under sections 430(d), 430(g), 430(h)(2), and 430(i) provide guidance on the determination of benefit liabilities and the valuation of plan assets for purposes of the funding requirements that apply to single employer defined benefit plans pursuant to changes made by the Pension Protection Act of 2006. In order to implement the statutory provisions under section 430(h)(2), the regulations provide for the sponsor of a defined benefit plan to make any of several elections related to the interest rate used for minimum funding purposes and require written notification of any such election to be provided to the plan's enrolled actuary. These final regulations provide for the sponsor of a defined benefit pension plan to make any of several elections.

Respondents: Private Sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 54,000 hours.

OMB Number: 1545–2190.

Type of Review: Extension without change of a currently approved collection.

Title: IRS Paid Preparer Tax Identification Number (PTIN) Application.

Form: W–12.

Abstract: Paid tax return preparers will be required to get a preparer tax identification number (PTIN), and to pay the fee required with the application. A third party will administer the PTIN application process. Most applications will be filled out on-line. Form W–12 is being developed to replace Form W–7P. Form W–12 will be used to collect the information the new regulations require and to collect the information the third party needs to administer the PTIN application process.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1,464,000 hours.

OMB Number: 1545–2192.

Type of Review: Extension without change of a currently approved collection.

Title: Report of Branded Prescription Drug Information.

Form: 8947.

Abstract: Per Section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111–148 (124 Stat. 119 (2010)), Form 8947 is used to report controlled group status and information on orphan drug credits allowed for covered pharmaceutical manufacturers and importers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,680 hours.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–6113 Filed 3–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which are currently approved collections of information, effective as of the June 30, 2011, report date. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before May 16, 2011.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to "Consolidated Reports of Condition and Income (FFIEC 031 and 041)" or "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S)," by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/Federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov.* Include "Consolidated Reports of Condition and Income, 3064–0052" in the subject line of the message.
- *Mail:* Gary A. Kuiper, (202) 898–3877, Counsel, Attn: Comments, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/Federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by "1550–0023 (TFR: Schedule DI Revisions)," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include "1550–0023 (TFR: Schedule DI Revisions)" in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0023 (TFR: Schedule DI Revisions)."
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0023 (TFR: Schedule DI Revisions)."

Instructions: All submissions received must include the agency name and OMB Control Number for this information

collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which are currently approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,440 national banks.

Estimated Time per Response: 53.24 burden hours.

Estimated Total Annual Burden: 306,662 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 826 State member banks.

Estimated Time per Response: 55.32 burden hours.

Estimated Total Annual Burden: 182,777 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,687 insured State nonmember banks.

Estimated Time per Response: 40.44 burden hours.

Estimated Total Annual Burden: 758,169 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 17 to 665 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 731 savings associations.

Estimated Time per Response: 60.3 hours average for quarterly schedules and 2.0 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Total Annual Burden: 183,943 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

Board

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002—236; FFIEC 002S—57.

Estimated Time per Response: FFIEC 002—25.43 hours; FFIEC 002S—6 hours.

Estimated Total Annual Burden: FFIEC 002—24,003 hours; FFIEC 002S—1,368 hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for State member banks), 12 U.S.C. 1817 (for insured State nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, the Call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for both on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten

percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data also are used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including, but not limited to, decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Current Actions

I. Deposit Insurance Assessment Base

In recent years, the FDIC has charged insured depository institutions (IDIs) an amount for deposit insurance equal to the deposit insurance assessment base times a risk-based assessment rate. Under this assessment system, which is set forth in part 327 of the FDIC's regulations (12 CFR part 327), the assessment base has been domestic deposits minus a few allowable exclusions, such as pass-through reserve balances. At present, an IDI reports its assessment base on a quarter-end basis in its regulatory report (Call Report, TFR, or FFIEC 002 report, as appropriate). However, the assessment base is reported on a daily average basis by larger institutions (that is, those with $1 billion or more in total assets), institutions insured by the FDIC after March 31, 2007, and other IDIs that elect to do so.

The FDIC calculates an initial base assessment rate (IBAR) for each IDI based on CAMELS ratings, a number of inputs derived from data the IDI reports in its regulatory report, and, for large institutions that have long-term debt issuer ratings, from these ratings. Under the existing assessment system, an IDI's total base assessment rate can vary from the IBAR as the result of three possible adjustments: the unsecured debt adjustment, the secured liability adjustment, and the brokered deposit adjustment.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, July 21, 2010) requires the FDIC to amend its regulations to redefine the assessment base used for calculating deposit insurance assessments. Specifically, section 331(b) of the Dodd-Frank Act (to be codified at 12 U.S.C. 1817(nt)) directs the FDIC:

> [T]o define the term 'assessment base' with respect to an insured depository institution * * * as an amount equal to
>
> (1) The average consolidated total assets of the insured depository institution during the assessment period; minus
>
> (2) The sum of —
>
> (A) the average tangible equity of the insured depository institution during the assessment period; and
>
> (B) In the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in * * * (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1) for a custodial bank or a banker's bank.

On February 7, 2011, the FDIC Board of Directors adopted a final rule that implements the requirements of section 331(b) of the Dodd-Frank Act by amending part 327 of the FDIC's regulations to redefine the assessment base used for calculating deposit insurance assessments effective April 1, 2011.[1] In general, the FDIC's final rule requires that all IDIs report average consolidated total assets in conformance with existing Call Report calculation requirements, except that institutions with assets of $1 billion or more and all newly insured depository institutions must report this average based on daily balances during the calendar quarter. Institutions with less than $1 billion in assets may report average consolidated total assets based on weekly balances during the calendar quarter, unless they choose to report daily averages. However, once an institution begins to report using daily averages, it must continue to do so.

In the case of an IDI that is the parent company of other IDIs, the FDIC's final rule requires that the parent IDI report its daily or weekly average consolidated total assets without consolidating its IDI subsidiaries into the calculations. For IDIs with consolidated subsidiaries that are not IDIs, the FDIC's final rule provides that these subsidiaries' assets, including those eliminated in consolidation, must be calculated using a daily or weekly averaging method, corresponding to the daily or weekly averaging requirement of the parent institution. Call Report instructions in effect for the quarter for which data are being reported will govern the calculation of the average amount of subsidiaries' assets, including those eliminated in consolidation. Current Call Report instructions state that, for purposes of consolidation, the date of the financial statements of a subsidiary should, to the extent practicable, match the date of the parent institution's financial statements, but in no case differ by more than one quarter. However, under the FDIC's final rule, once an institution reports the average amount of subsidiaries' assets, including those eliminated in consolidation, using concurrent data, the institution must do so for all subsequent quarters.

The FDIC's final rule uses Tier 1 capital as the measure for tangible equity. In general, the final rule requires institutions with assets of $1 billion or more and all newly insured institutions to report the average of the current quarter's month-end balances of Tier 1 capital, but allows an institution with less than $1 billion in average consolidated total assets to report the end-of-quarter amount of Tier 1 capital as its average tangible equity. An institution with less than $1 billion in average consolidated total assets may elect permanently to report average tangible equity capital using the current quarter's month-end balances.

[1] 76 FR 10672, February 25, 2011.

Under the FDIC's final rule, an IDI with one or more IDI subsidiaries must report average tangible equity (or end-of-quarter tangible equity, as appropriate) without consolidating its IDI subsidiaries into the calculations. An IDI that reports average tangible equity using a monthly averaging method and has subsidiaries that are not IDIs must use monthly average data for the subsidiaries. The monthly average data for these subsidiaries, however, may be calculated using data for the current quarter or the prior quarter consistent with the method used for these subsidiaries' data when reporting average consolidated total assets.

For a banker's bank, the final rule provides for the deduction of certain assets from its assessment base, as permitted by the Dodd-Frank Act, provided the bank conducts at least 50 percent of its business with entities other than its parent holding company or entities other than those controlled directly or indirectly by its parent holding company. For a qualifying banker's bank, this deduction equals the sum of its average balances due from Federal Reserve Banks plus its average Federal funds sold. However, the amount of this deduction cannot exceed the sum of the banker's bank's average deposits due to commercial banks and other depository institutions in the United States plus its average Federal funds purchased. These averages would be calculated on a daily or weekly basis consistent with the banker's bank's calculation of its average consolidated total assets.

The FDIC's final rule defines a custodial bank as an IDI that had "fiduciary and custody and safekeeping assets" of at least $50 billion as of the end of the previous calendar year or gross fiduciary and related services income of at least 50 percent of its total revenue (interest income plus noninterest income) during the previous calendar year. Consistent with the Dodd-Frank Act, the final rule provides for the deduction of the daily or weekly average amount of certain low-risk assets from the assessment base of custodial banks. These assets are the portion of a custodial bank's cash and balances due from depository institutions, held-to-maturity securities, available-for-sale securities, Federal funds sold, and securities purchased under agreements to resell that have a risk weighting for risk-based capital purposes of zero percent, regardless of maturity, plus 50 percent of the portion of these same five types of assets that have a risk weighting of 20 percent, regardless of maturity. However, the amount of the deduction of these low-risk assets is limited to the daily or weekly average amount of the custodial bank's deposit liabilities classified as transaction accounts and identified by the custodial bank as being directly linked to a fiduciary, custody, or safekeeping account.

As previously mentioned, the FDIC's existing assessment system incorporates adjustments to the assessment rate schedule for types of funding that pose heightened risk to the Deposit Insurance Fund (DIF) or help offset risk to the DIF. Because the magnitude of these adjustments has been calibrated to a domestic deposit assessment base, the FDIC's final rule recalibrates the unsecured debt and brokered deposit adjustments and eliminates the secured liability adjustment. The final rule also adds a depository institution debt adjustment. These changes should more accurately reflect the risk that these funding mechanisms pose to the DIF.

Specifically, the FDIC's final rule changes the assessment rate reduction for long-term unsecured liabilities so the effect of the assessment system on an institution's cost of borrowing using long-term unsecured debt will remain unchanged. The final rule also changes the cap on the unsecured debt adjustment from 5 basis points to the lesser of 5 basis points or 50 percent of an institution's IBAR to ensure that no institution's assessment rate is zero or close to zero. In addition, the final rule removes qualified Tier 1 capital from the definition of long-term unsecured liabilities for small institutions because Tier 1 capital is already deducted from the assessment base as redefined by the Dodd-Frank Act. The final rule also eliminates debt that is redeemable within one year of the reporting date from qualifying as long-term because such a redemption option negates the benefit to the DIF of long-term debt.

The FDIC's final rule also creates a new Depository Institution Debt Adjustment that would apply a 50 basis point charge to every dollar of long-term unsecured debt (in excess of 3 percent of an institution's Tier 1 capital) held by an IDI that was issued by another IDI. This adjustment is intended to offset the benefit received by institutions that issue long-term, unsecured liabilities when those liabilities are held by other IDIs because the risk of this debt remains in the banking system.

The FDIC's final rule retains the brokered deposit adjustment of 25 basis points times the ratio of brokered deposits in excess of 10 percent of domestic deposits, but the adjustment has been recalibrated to the new assessment base. For small institutions, the adjustment would continue to apply only to institutions in Risk Categories II, III, and IV. For large institutions, the final rule provides an exemption from the adjustment for institutions that are well-capitalized and have a composite CAMELS rating of 1 or 2. The final rule maintains the 10 basis points cap on the brokered deposit adjustment.

Proposed Regulatory Reporting Changes for the New Assessment Base

The implementation of the new assessment base will require the agencies to collect some information from IDIs that is not currently collected on the Call Report, the TFR, or the FFIEC 002 report. These reporting changes would take effect as of the June 30, 2011, report date, which is the first quarter-end report date after the April 1, 2011, effective date of the FDIC's final rule. However, the burden of requiring these new data items will be partly offset by deleting some assessment data items currently collected from these regulatory reports. More specifically, the agencies are proposing to delete the existing data items for the total daily averages of deposit liabilities before exclusions, allowable exclusions, and foreign deposits.[2]

Under the FDIC's final rule, with certain exceptions, the assessment base for an IDI is defined as the IDI's average consolidated total assets during the assessment period minus the IDI's average tangible equity during the assessment period. The exceptions pertain to banker's banks, custodial banks, and insured U.S. branches of foreign banks. However, the starting point for the measurement of the assessment base for banker's banks and custodial banks is average consolidated total assets minus average tangible equity. As discussed above, average consolidated total assets must be reported on a daily average basis by institutions with $1 billion or more in total assets, all newly insured institutions, and institutions with less than $1 billion in total assets that elect to do so. Institutions with less than $1 billion in total assets (that are not newly insured) that do not elect to report on a daily average basis must report average consolidated total assets on a weekly average basis.

Under the FDIC's final rule, average consolidated total assets is defined in accordance with the instructions for item 9 of Call Report Schedule RC–K—

[2] In the Call Report, items 4, 5, and 6 in Schedule RC–O—Other Data for Deposit Insurance and FICO Assessments; in the TFR, line items DI540, DI550, and DI560 in Schedule DI—Consolidated Deposit Information; and in the FFIEC 002 report, items 4, 5, and 6 in Schedule O—Other Data for Deposit Insurance Assessments.

Quarterly Averages. These instructions provide that the average should be calculated using the institution's total assets, as defined for Call Report balance sheet (Schedule RC) purposes, except that the institution's calculation should incorporate all debt securities (not held for trading) at amortized cost, equity securities with readily determinable fair values at the lower of cost or fair value, and equity securities without readily determinable fair values at historical cost.[3] However, the final rule requires certain additional adjustments to the Schedule RC–K method of calculating average consolidated total assets for IDIs with consolidated insured depository subsidiaries[4] and for IDIs involved in mergers and consolidations during the quarter.[5]

Thus, to provide the FDIC with the amount of average consolidated total assets measured in accordance with the FDIC's assessment regulations, the agencies are proposing to add an item for this average to Call Report Schedule RC–O and TFR Schedule DI along with an item in which the institution would report whether it has measured the average using the daily or weekly averaging method. For most banks, the additional adjustments identified in the preceding paragraph will not be applicable. Therefore, if these banks measure average total assets for Schedule RC–K purposes using the same averaging method (daily or weekly) they are required to use for the proposed new Schedule RC–O item, they will be able to carry the average total assets figure reported in Schedule RC–K over to Schedule RC–O. In contrast, for purposes of reporting average total assets in line item SI870 of TFR Schedule SI—Supplemental Information, savings associations do not measure debt and equity securities in the same manner as banks.[6] Thus, savings associations would not be able to carry the average total assets figure currently reported in Schedule SI to the proposed new Schedule DI item.

Under the FDIC's final rule, tangible equity is defined as Tier 1 capital. Banks currently report the amount of their Tier 1 capital as of quarter-end in item 11 of Call Report Schedule RC–R—Regulatory Capital.[7] Savings associations currently report the amount of their Tier 1 capital as of quarter-end in line item CCR20 of TFR Schedule CCR—Consolidated Capital Requirement. Because the FDIC's final rule reduces average consolidated total assets by average tangible equity, the agencies are proposing to add a new item to Call Report Schedule RC–O and TFR Schedule DI for average Tier 1 capital. In accordance with the FDIC's final rule, average Tier 1 capital must be reported on a monthly average basis by institutions with $1 billion or more in total assets, all newly insured institutions, and institutions with less than $1 billion in total assets that elect to do so. Monthly average Tier 1 capital is computed by adding Tier 1 capital as of each month-end during the quarter and dividing by three. Institutions with less than $1 billion in total assets (that are not newly insured) that do not elect to report on a monthly average basis will report their quarter-end Tier 1 capital (from Schedule RC–R or Schedule CCR, as appropriate) as their "average" Tier 1 capital. As with average consolidated total assets, IDIs with consolidated insured depository subsidiaries[8] and IDIs involved in mergers and consolidations during the quarter[9] must make certain additional adjustments when reporting average Tier 1 capital.

The agencies also are proposing to add comparable new items for average consolidated total assets, the averaging method used for assets, and average tangible equity to Schedule O of the FFIEC 002 report for insured U.S. branches of foreign banks. In accordance with the FDIC's final rule, average consolidated total assets for an insured branch would be calculated using the total assets of the branch (including net due from related depository institutions), as defined for purposes of Schedule RAL—Assets and Liabilities of the FFIEC 002 report, but with debt and equity securities measured in the same manner as in Call Report Schedule RC–K. In addition, insured branches would calculate average consolidated total assets using a daily or weekly averaging method, as appropriate, based on the same asset size criteria that apply to other IDIs. Tangible equity for an insured branch would be calculated on a monthly average or quarter-end basis, according to the branch's size, and would be defined as eligible assets (determined in accordance with section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries).

As discussed above, the FDIC's final rule permits an institution that is a qualifying banker's bank to deduct certain assets from its assessment base up to a specified limit. To be a qualifying banker's bank, an institution must meet the definition of this term in 12 U.S.C. 24 and conduct at least 50 percent of its business with entities other than its parent holding company or entities other than those controlled either directly or indirectly by its parent holding company.[10] Accordingly, the agencies propose to add a yes/no question to Call Report Schedule RC–O and TFR Schedule DI that would ask whether the reporting institution meets both the statutory definition of a banker's bank and the business conduct test. If the institution answers in the affirmative (*i.e.,* that it is a qualifying banker's bank), the institution would then report the data needed by the FDIC to determine the amount to be deducted from its assessment base in two proposed new items. More specifically, a qualifying banker's bank would use the same averaging method it used to calculate average consolidated total assets, *i.e.,* daily or weekly, to report the average amounts of (1) its banker's bank deductions, which is the sum of the

[3] The instructions for Call Report Schedule RC–K, item 9, further provide that, "to the extent that net deferred tax assets included in the bank's total assets, if any, include the deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities, these deferred tax effects may be excluded from the determination of the quarterly average for total assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time."

[4] Under the final rule, section 327.5(a)(3)(ii) of the FDIC's regulations states that "[i]nvestments in insured depository institution subsidiaries should be included in total assets using the equity method of accounting" rather than on a consolidated basis.

[5] Under the final rule, section 327.5(a)(1)(iii) of the FDIC's regulations states that "[t]he average calculation of the assets of the surviving or resulting institution in a merger or consolidation shall include the assets of all the merged or consolidated institutions for the days in the quarter prior to the merger or consolidation, whether reported by the daily or weekly method."

[6] In addition, savings associations are permitted to use of month-end averaging as an alternative to daily or weekly averaging when reporting average total assets in line item SI870.

[7] For banks with financial subsidiaries, Tier 1 capital is the amount reported in Schedule RC–R, item 11, less the adjustment for investments in financial subsidiaries reported in Schedule RC–R, item 28.a.

[8] Under the final rule, section 327.5(a)(3)(ii) of the FDIC's regulations states that such institutions should report tangible equity "without consolidating their insured depository institution subsidiaries into the calculations. Investments in insured depository institution subsidiaries should be included in total assets using the equity method of accounting."

[9] Under the final rule, section 327.5(a)(2)(iii) of the FDIC's regulations states that "[f]or the surviving institution in a merger or consolidation, Tier 1 capital shall be calculated as if the merger occurred on the first day of the quarter in which the merger or consolidation occurred."

[10] Banker's banks that have funds from government capital infusion programs (such as TARP and the Small Business Lending Fund), and stock owned by the FDIC as a result of bank failures, as well as non-bank-owned stock resulting from equity compensation programs, are not excluded from the definition of a banker's bank.

averages of its balances due from the Federal Reserve and its Federal funds sold, and (2) its banker's bank deduction limit, which is the sum of the averages of its deposit balances due to commercial banks and other depository institutions in the United States and its Federal funds purchased.

Also as mentioned above, an institution that is a custodial bank is permitted to deduct certain average low-risk assets from its assessment base up to a specified limit. As defined in the FDIC's final rule, a custodial bank is an IDI with previous calendar year-end "fiduciary and custody and safekeeping assets" of at least $50 billion [11] or previous calendar year income from fiduciary activities of at least 50 percent of its previous calendar year revenue.[12] Accordingly, as has been proposed for banker's banks, the agencies propose to add a yes/no question to Call Report Schedule RC–O and TFR Schedule DI that would ask whether the reporting institution meets the definition of a custodial bank. If the institution answers in the affirmative (*i.e.,* that it is a qualifying custodial bank), the institution would then report the data necessary for the FDIC to determine the amount to be deducted from its assessment base in two proposed new items. In this regard, custodial banks would report the average amount of (1) qualifying low-risk assets and (2) transaction account deposit liabilities linked to a fiduciary, custody, or safekeeping account.[13] A custodial bank would compute these averages using the same averaging method it used to calculate average consolidated total assets, *i.e.,* daily or weekly. Qualifying low-risk assets are the portion of the custodial bank's cash and balances due from depository institutions, held-to-maturity securities, available-for-sale securities, Federal funds sold, and securities purchased under agreements to resell (as defined in Call Report Schedule RC—Balance Sheet, items 1, 2.a, 2.b, 3.a, and 3.b, respectively) that have a zero percent risk weight for risk-based capital purposes plus 50 percent of the portion of these same five types of assets that have a 20 percent risk weight.[14]

As an input to the new Depository Institution Debt adjustment created in the FDIC's final rule, the agencies propose to add an item to Call Report Schedule RC–O, TFR Schedule DI, and FFIEC 002 report Schedule O in which IDIs would report the amount of their holdings of long-term unsecured debt issued by other IDIs (as reported on the balance sheet). Debt would be considered long-term if it has a remaining maturity of at least one year, except if the holder has the option to redeem the debt within the next 12 months. Unsecured debt includes senior unsecured liabilities and subordinated debt. Senior unsecured liabilities are unsecured liabilities that are reportable as "Other borrowings" by the issuing IDI on its quarterly regulatory report, excluding any such liabilities that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program (12 CFR part 370). Subordinated debt includes subordinated notes and debentures and limited-life preferred stock.

Finally, the agencies are proposing to make an instructional change to two existing Call Report and TFR items that are used to determine the unsecured debt adjustment. For the data items for "Unsecured 'Other borrowings' " and "Subordinated notes and debentures" with a remaining maturity of one year or less,[15] the instructions would be revised to include debt instruments for which the holder has the option to redeem the debt within one year of the report date.

II. Risk-Based Assessment System for Large Insured Depository Institutions

The FDIC's final rule amends the assessment system applicable to large IDIs to better capture risk at the time the institution assumes the risk, better differentiate risk among large IDIs during periods of good economic and banking conditions based on how they would fare during periods of stress or economic downturns, and better take into account the losses that the FDIC may incur if a large IDI fails.

Under the FDIC's final rule, assessment rates for large IDIs will be calculated using a scorecard that combines CAMELS ratings and certain forward-looking financial measures to assess the risk a large institution poses to the DIF. One scorecard will apply to most large institutions and another to institutions that are structurally and operationally complex or pose unique challenges and risk in the case of failure (highly complex institutions). In general terms, a large institution is an IDI with total assets of $10 billion or more whereas a highly complex institution is an IDI (other than a credit card bank [16]) with total assets of $50 billion or more that is controlled by a U.S. holding company that has total assets of $500 billion or more or an IDI that is a processing bank or trust company.[17] A processing bank or trust company generally is an IDI with total assets of $10 billion or more; total fiduciary assets of $500 billion or more; and total non-lending interest income, fiduciary revenues (which must not be zero), and investment banking fees for the last three years in excess of 50 percent of total revenues.[18]

The scorecard for large institutions (other than highly complex institutions) produces two scores—a performance score and a loss severity score—that are converted into a total score. The performance score measures a large institution's financial performance and its ability to withstand stress. The loss severity score measures the relative magnitude of potential losses to the

[11] In Call Report Schedule RC–T—Fiduciary and Related Services Income, the sum of item 10, columns A and B, plus item 11, column B. In TFR Schedule FS—Fiduciary and Related Services, the sum of line items FS20, FS21, and FS280.

[12] In the Call Report, income from fiduciary activities is reported in Schedule RI—Income Statement, item 5.a, and total revenue is the sum of two Schedule RI items: item 1.h, "Total interest income," and item 5.m, "Total noninterest income." In the TFR, income from fiduciary activities is reported in Schedule FS, line item FS30, and total revenue is the sum of two line items in Schedule SO—Consolidated Statement of Operations: line item SO11, Total "Interest income," and line item SO42, Total "Noninterest income."

[13] As defined in Federal Reserve Regulation D, a "transaction account" is defined in general as a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar devices for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine, a remote service unit, or another electronic device, including by debit card. For purposes of the proposed new transaction account item, custodial banks with deposits in foreign offices would include foreign office deposit liabilities with the characteristics of a transaction account that are linked to fiduciary, custody, and safekeeping accounts.

[14] In the Call Report, the types of assets that are custodial bank low-risk assets are included, as of quarter-end, in items 34 through 37, columns C (zero percent risk weight) and D (20 percent risk weight), of Schedule RC–R—Regulatory Capital. In the TFR, the types of assets that are custodial bank low-risk assets are included, as of quarter-end, in line items CCR400, CCR405, CCR409, and CCR415 (zero percent risk weight) and in line items CCR430, CCR435, CCR440, CCR445, and CCR450 (20 percent risk weight) of Schedule CCR—Consolidated Capital Requirement.

[15] In the Call Report, Schedule RC–O, items 7.a and 8.a, respectively. In the TFR, Schedule DI, line items DI645 and DI655, respectively.

[16] As defined in the FDIC's final rule, a credit card bank is an IDI for which credit card receivables plus securitized receivables exceed 50 percent of assets plus securitized receivables.

[17] Under both the FDIC's final rule and the FDIC's existing assessment regulations, an insured U.S. branch of a foreign bank is a "small institution" regardless of its total assets.

[18] *See* sections 327.8(f), (g), and (s) of the FDIC's regulations for the full definitions of the terms "large institution," "highly complex institution," and "processing bank or trust company," respectively. Insured U.S. branches of foreign banks are excluded from these categories of institutions.

FDIC in the event of a large institution's failure.

The performance score for large institutions is a weighted average of the scores for three components: (1) Weighted average CAMELS rating score; (2) ability to withstand asset-related stress score; and (3) ability to withstand funding-related stress score. The score for the ability to withstand asset-related stress is a weighted average of the scores for four measures:

- Tier 1 leverage ratio;
- Concentration measure (the greater of the higher-risk assets to the sum of Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score);
- The ratio of core earnings to average quarter-end total assets; and
- Credit quality measure (the greater of the criticized and classified items to the sum of Tier 1 capital and reserves score or the underperforming assets to the sum of Tier 1 capital and reserves score).

The score for the ability to withstand funding-related stress is the weighted average of the scores for two measures that are most relevant to assessing a large institution's ability to withstand such stress:

- A core deposits-to-total liabilities ratio; and
- A balance sheet liquidity ratio, which measures the amount of highly liquid assets needed to cover potential cash outflows in the event of stress.

The loss severity score for large institutions is based on a loss severity measure that estimates the relative magnitude of potential losses to the FDIC in the event of a large institution's failure. The loss severity measure applies a standardized set of assumptions (based on recent failures) regarding liability runoffs and the recovery value of asset categories to calculate possible losses to the FDIC. Asset loss rate assumptions are based on estimates of recovery values for IDIs that failed or came close to failure. Run-off assumptions are based on the actual experience of IDIs that either failed or came close to failure from 2007 through 2009.

For highly complex institutions, there is a different scorecard with measures tailored to the risks these institutions pose. However, the structure and much of the scorecard for a highly complex institution are similar to the scorecard for other large institutions. Like the scorecard for other large institutions, the scorecard for highly complex institutions contains a performance score and a loss severity score. These scores are converted into a total score. The loss severity score for highly complex institutions is calculated the same way as the loss severity score for other large institutions.

The performance score for highly complex institutions is the weighted average of the scores for the same three components as for large institutions: (1) Weighted average CAMELS rating score; (2) ability to withstand asset-related stress score; and (3) ability to withstand funding-related stress score. However, the measures contained in the latter two components for highly complex institutions differ from those for large institutions.

The score for the ability to withstand asset-related stress is a weighted average of the scores for four measures:

- Tier 1 leverage ratio;
- Concentration measure (the greatest of the higher-risk assets to the sum of Tier 1 capital and reserves score, the top 20 counterparty exposure to the sum of Tier 1 capital and reserves score, or the largest counterparty exposure to the sum of Tier 1 capital and reserves score);
- The ratio of core earnings to average quarter-end total assets; and
- Credit quality measure (the greater of the criticized and classified items to the sum of Tier 1 capital and reserves score or the underperforming assets to the sum of Tier 1 capital and reserves score) and market risk measure (the weighted average of the four-quarter trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score).

The score for the ability to withstand funding-related stress is the weighted average of the scores for three measures, the first two of which are also contained in the scorecard for large institutions:

- A core deposits-to-total liabilities ratio;
- A balance sheet liquidity ratio; and
- An average short-term funding to average total assets ratio.

The method for calculating the total score for large institutions and highly complex institutions is the same. Once the performance and loss severity scores are calculated for a large or highly complex institution, these scores are converted to a total score. Each institution's total score is calculated by multiplying its performance score by a loss severity factor derived from its loss severity score. The total score is then used to determine the IBAR for each large institution and highly complex institution.

For complete details on the scorecards for large institutions and highly complex institutions, including the measures used in the calculation of performance scores and loss severity scores, *see* the FDIC's final rule.

Proposed Regulatory Reporting Changes for the Revised Risk-Based Assessment System for Large Institutions and Highly Complex Institutions

Most of the data used as inputs to the scorecard measures for large institutions and highly complex institutions are available from the Call Reports and TFRs filed quarterly by these institutions, but the data items needed to compute four scorecard measures—higher-risk assets, top 20 counterparty exposures, the largest counterparty exposure, and criticized/classified items—are not. With the revised risk-based assessment system for these institutions under the FDIC's final rule taking effect in the second quarter of 2011, the agencies are proposing that the new data items described below for large institutions be added to the Call Report and the TFR effective June 30, 2011, and that the new data items described below for highly complex institutions be added to the Call Report as of that same date.[19] In addition, certain other data items that will be used in the scorecards for large institutions are not currently reported in the TFR by savings associations. The agencies are proposing to add these data items to the TFR as of June 30, 2011, and they would be reported by savings associations that are large institutions or report $10 billion or more in total assets as of that or a subsequent quarter-end date. Currently, there are about 110 IDIs with $10 billion or more in total assets that would be affected by some or all of these additional reporting requirements, of which 20 are savings associations.

The proposed new data items that would be completed by large institutions and highly complex institutions are first discussed below (sections A through G below), followed by a discussion of those proposed data items that would be completed only by highly complex institutions (sections H and I below). The proposed data items for criticized and classified items, nontraditional mortgage loans, subprime consumer loans, leveraged loans, top 20 counterparty exposures, and largest counterparty exposure are currently gathered for the FDIC's use through examination processes at large

[19] It is not necessary to add the data items for highly complex institutions to the TFR because no savings associations are expected to meet the definition of a highly complex institution. If a savings association were to become a highly complex institution before its proposed conversion from filing TFRs to filing Call Reports effective March 31, 2012 (*see* 76 FR 7082, February 8, 2011), the FDIC would collect the necessary data directly from the savings association.

institutions and are treated as confidential examination information. The agencies are now proposing to obtain these data items directly from each large or highly complex institution in its regular quarterly regulatory report (Call Report or TFR) and use the reported data as inputs to scorecard measures. Because the agencies would continue to regard these items as examination information, the information would continue to be accorded confidential treatment when collected via the Call Report and TFR. Finally, publicly available data items currently collected in the Call Report that are proposed for addition to the TFR as new (publicly available) data items applicable to large institutions are discussed (section J below).

A. Criticized and Classified Items—Separate data items would be added to the Call Report for the amount of items designated Special Mention, Substandard, Doubtful, and Loss.[20] These four data items would be completed by large institutions and highly complex institutions and would cover both on- and off-balance sheet items that are criticized and classified. These data items are now collected on a confidential basis from all savings associations on the TFR in Schedule VA—Consolidated Valuation Allowances and Related Data in line items VA960, VA965, VA970, and VA975.

According to Appendix A of the FDIC's final rule:

> Criticized and classified items include items an institution or its primary Federal regulator have graded "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.[2] Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

[2] A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

[20] Loss items would include any items graded Loss that have not yet been written off against the allowance for loan and leases losses (or another valuation allowance) or charged directly to earnings, as appropriate.

Saving associations that are large institutions or highly complex institutions would complete existing line items VA960, VA965, VA970, and VA975 in accordance with the preceding Appendix A guidance rather than the existing TFR instructions for these four line items. All other savings associations would continue to follow the existing TFR instructions for these four line items.

B. Nontraditional Mortgage Loans—One item would be added to the Call Report and the TFR for the balance sheet amount of nontraditional 1–4 family residential mortgage loans, including certain securitizations of such mortgages. The item would be completed by large institutions and highly complex institutions. As described in Appendix C of the FDIC's final rule, nontraditional mortgage loans include all:

> residential loan products that allow the borrower to defer repayment of principal or interest and includes all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages.[8, 9, 10]
>
> For purposes of the higher-risk concentration ratio, nontraditional mortgage loans include securitizations where more than 50 percent of the assets backing the securitization meet one or more of the preceding criteria for nontraditional mortgage loans, with the exception of those securities classified as trading book.

[8] For purposes of this rule making, a teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term.

[9] *http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html.*

[10] A mortgage loan is no longer considered a nontraditional mortgage once the teaser rate has expired. An interest only loan is no longer considered nontraditional once the loan begins to amortize.

The amount to be reported for nontraditional mortgage loans would include purchased credit impaired loans as defined in Financial Accounting Standards Board Accounting Standards Codification Subtopic 310–30, Receivables—Loans and Debt Securities Acquired with Deteriorated Credit Quality (formerly AICPA Statement of Position 03–3, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer"). The amount to be reported would exclude amounts recoverable on nontraditional mortgage loans from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

C. Subprime Consumer Loans—One item would be added to the Call Report and the TFR for the balance sheet amount of subprime consumer loans. The item would be completed by large institutions and highly complex institutions. According to Appendix C of the FDIC's final rule, subprime loans include:

> loans made to borrowers that display one or more of the following credit risk characteristics (excluding subprime loans that are previously included as nontraditional mortgage loans) at origination or upon refinancing, whichever is more recent.
>
> • Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
> • Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
> • Bankruptcy in the last 5 years; or
> • Debt service-to-income ratio of 50 percent or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.[11]
>
> Subprime loans also include loans identified by an insured depository institution as subprime loans based upon similar borrower characteristics and securitizations where more than 50 percent of assets backing the securitization meet one or more of the preceding criteria for subprime loans, excluding those securities classified as trading book.

[11] *http://www.fdic.gov/news/news/press/2001/pr0901a.html;* however, the definition in the text above excludes any reference to FICO or other credit bureau scores.

As with nontraditional mortgages, the amount to be reported for subprime loans would include purchased credit impaired loans, but would exclude amounts recoverable on subprime loans from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

D. Leveraged Loans—One item would be added to the Call Report and the TFR for the amount of leveraged loans. The item would be completed by large institutions and highly complex institutions. As described in Appendix C of the FDIC's final rule, leveraged loans include:

> (1) All commercial loans (funded and unfunded) with an original amount greater than $1 million that meet any one of the conditions below at either origination or renewal, except real estate loans; (2) securities issued by commercial borrowers that meet any one of the conditions below at either origination or renewal, except securities classified as trading book; and (3) securitizations that are more than 50 percent collateralized by assets that meet any one of the conditions below at either origination or renewal, except securities classified as trading book.[4, 5]

• Loans or securities where borrower's total or senior debt to trailing twelve-month EBITDA[6] (*i.e.* operating leverage ratio) is greater than 4 or 3 times, respectively. For purposes of this calculation, the only permitted EBITDA adjustments are those adjustments specifically permitted for that borrower in its credit agreement; or

• Loans or securities that are designated as highly leveraged transactions (HLT) by syndication agent.[7]

[4] The following guidelines should be used to determine the "original amount" of a loan:

(1) For loans drawn down under lines of credit or loan commitments, the "original amount" of the loan is the size of the line of credit or loan commitment when the line of credit or loan commitment was most recently approved, extended, or renewed prior to the report date. However, if the amount currently outstanding as of the report date exceeds this size, the "original amount" is the amount currently outstanding on the report date.

(2) For loan participations and syndications, the "original amount" of the loan participation or syndication is the entire amount of the credit originated by the lead lender.

(3) For all other loans, the "original amount" is the total amount of the loan at origination or the amount currently outstanding as of the report date, whichever is larger.

[5] Leveraged loans criteria are consistent with guidance issued by the Office of the Comptroller of the Currency in its Comptroller's Handbook, *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf,* but do not include all of the criteria in the handbook.

[6] Earnings before interest, taxes, depreciation, and amortization.

[7] *http://www.fdic.gov/news/news/press/2001/pr2801.html.*

Institutions would report the balance sheet amount of leveraged loans that have been funded. Unfunded amounts include the unused portions of irrevocable and revocable commitments to make or purchase leveraged loans. The amount to be reported for leveraged loans would include purchased credit impaired loans, but would exclude amounts recoverable on leveraged loans from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

E. Loans Wholly or Partially Guaranteed by the U.S. Government—As the first step in the calculation of the growth-adjusted portfolio concentration measure for large institutions, concentration levels are determined for each of seven loan portfolio categories:

• Construction and land development loans secured by real estate (including land loans);

• Other commercial real estate loans (including loans secured by multifamily and nonfarm nonresidential properties);

• First lien 1–4 family residential mortgages (including non-agency residential mortgage-backed securities);

• Closed-end junior lien 1–4 family residential mortgages and home equity lines of credit;

• Commercial and industrial loans;

• Credit card loans; and

• Other consumer loans.

The concentration calculations include purchased credit impaired loans, but exclude amounts recoverable from the U.S. government, including its agencies and its sponsored agencies, under guarantee or insurance provisions. In addition, for both large institutions and highly complex institutions, one of the components of the higher risk assets concentration measure is the amount of funded and unfunded construction and land development loans secured by real estate (including land loans).

The agencies separately have proposed to collect the amount of funded loans in each of these categories that is covered by loss-sharing agreements with the FDIC effective March 31, 2011.[21] However, the agencies do not collect data on the portion of funded and unfunded loans that are wholly or partially guaranteed or insured by the U.S. government when the guarantor or insurer is not the FDIC, nor do they collect data on the portion of unfunded construction and land development loan commitments covered by FDIC loss-sharing agreements. Therefore, the agencies are proposing to add items to the Call Report and TFR for each of the seven loan categories mentioned above in which large institutions would report the portion of the balance sheet amount of funded loans that is guaranteed or insured by the U.S. government, including its agencies and its government-sponsored agencies, other than by the FDIC under loss-sharing agreements. In addition, for the higher risk assets concentration measure, the new item for funded U.S. government-guaranteed or -insured construction and land development loans would be completed by highly complex institutions. An additional proposed new item for the portion of unfunded construction and land development loan commitments that is guaranteed or insured by the U.S. government, including by the FDIC, would be completed by large institutions and highly complex institutions.

Examples of loans to be included in the proposed new items include those guaranteed by the Small Business Administration and insured by the Federal Housing Administration. Institutions would exclude loans guaranteed or insured by State or local governments, State or local government agencies, foreign (non-U.S.) governments, and private agencies or organizations as well as loans collateralized by securities issued by the U.S. government, including its agencies and its government-sponsored agencies.

F. Other Real Estate Owned Wholly or Partially Guaranteed by the U.S. Government—When calculating the underperforming assets ratio for large institutions and highly complex institutions, the amount of other real estate owned (ORE) that is recoverable from the U.S. government, including its agencies and its sponsored agencies, under guarantee or insurance provisions is excluded from the overall amount of ORE as reported on the balance sheet. The agencies separately have proposed to collect data on the portion of ORE that is covered by loss-sharing agreements with the FDIC effective March 31, 2011.[22] Institutions currently report certain other information on ORE that is protected in whole or in part by a U.S. government guarantee or insurance in the Call Report and TFR. However, the amount of ORE recoverable from the U.S. government, other than through FDIC loss-sharing agreements, cannot be determined from these existing Call Report and TFR data items. Therefore, the agencies are proposing to add an item to the Call Report and the TFR in which large institutions and highly complex institutions would report the amount of ORE that is recoverable from the U.S. government, including its agencies and its sponsored agencies, under guarantee or insurance provisions, excluding any ORE covered under FDIC loss-sharing agreements. Institutions would also exclude ORE protected under guarantee or insurance provisions by State or local governments, State or local government agencies, foreign (non-U.S.) governments, and private agencies or organizations.

G. Core Deposit Ratio—One item would be added to the Call Report and TFR to support the calculation of the core deposits/total liabilities ratio. Appendix A of the FDIC's final rule states that that this ratio equals "[t]otal domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities." Large institutions and highly complex institutions would complete a new item for the amount of their

[21] For the Call Report, *see* 76 FR 5253, January 28, 2011. For the TFR, *see* 76 FR 6191, February 3, 2011.

[22] *See* footnote 21.

nonbrokered time deposits of more than $250,000. The agencies currently collect the other components of this ratio in the Call Report and the TFR.

H. Top 20 Counterparty Exposures—An item would be added to the Call Report for the total amount of the institution's 20 largest counterparty exposures, which would be completed only by highly complex institutions. According to Appendix A of the FDIC's final rule:

> Counterparty exposure is equal to the sum of Exposure at Default (EAD) associated with derivatives trading and Securities Financing Transactions (SFTs) and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level [of the counterparty].[1]

[1] EAD and SFTs are defined and described in the compilation issued by the Basel Committee on Banking Supervision in its June 2006 document, "International Convergence of Capital Measurement and Capital Standards." The definitions are described in detail in Annex 4 of the document. Any updates to the Basel II capital treatment of counterparty credit risk would be implemented as they are adopted. *http://www.bis.org/publ/bcbs128.pdf.*

I. Largest Counterparty Exposure—An item would be added to the Call Report for the amount of the institution's largest counterparty exposure, which would be completed only by highly complex institutions. The counterparty exposure would be measured as described above for the top 20 counterparty exposures.

J. Items for Addition to the TFR—As previously mentioned, certain data items used in the scorecards for large institutions are not currently reported in the TFR by savings associations, but are reported in the Call Report.

In particular, trading assets are only reported as a supplemental item on the TFR (line item SI375 in Schedule SI) and trading liabilities are not reported at all. Thus, when evaluating the composition of the balance sheet in TFR Schedule SC—Consolidated Statement of Condition, the asset and liability categories presented in the schedule combine amounts held for trading with amounts held for purposes other than trading. In contrast, the Call Report balance sheet (Schedule RC) includes separate line items for trading assets and trading liabilities, and banks that reported average trading assets of $2 million or more in any of the four preceding calendar quarters must complete a separate trading schedule (Schedule RC–D) that provides detailed information on the composition of trading assets and liabilities.

To calculate the loss severity measure and the balance sheet liquidity ratio in accordance with the FDIC's final rule for savings associations that are large institutions, the agencies are proposing that savings associations that are defined as large institutions or report $10 billion or more in total assets in their June 30, 2011, or a subsequent TFR would provide data on the fair value of trading assets and liabilities included in various balance sheet asset and liability categories reported in TFR Schedule SC. Asset categories for which the amount of trading assets included in the category would be reported are:

- "Other Interest-Earning Deposits" (line item SC118);
- "Federal Funds Sold and Securities Purchased Under Agreements to Resell" (line item SC125);
- "U.S. Government, Agency, and Sponsored Enterprise Securities" (line item SC130);
- "Equity Securities Carried at Fair Value" (line item SC140);
- "State and Municipal Obligations" (line item SC180);
- "Securities Backed by Nonmortgage Loans" (line item SC182);
- "Other Investment Securities" (line item SC185);
- "Other Pass-Through" mortgage-backed securities (line item SC215);
- "Other" mortgage-backed securities (line item SC222);
- Mortgage-backed securities other than the preceding two categories (line items SC210, 217, and 219);
- "Construction Loans" (line items SC230, SC235, and SC240);
- "Revolving, Open-End Loans" on 1–4 family residential properties (line item SC251);
- Loans "Secured by First Liens" on 1–4 family residential properties (line item SC254);
- Loans "Secured by Junior Liens" on 1–4 family residential properties (line item SC255);
- Real estate loans on "Multifamily (5 or More) Dwelling Units" (line item SC 256);
- Real estate loans on "Nonresidential Property (Except Land)" (line item SC260) (with loans secured by nonfarm nonresidential properties and loans secured by farmland reported separately);
- Loans secured by "Land" (line item SC265);
- "Commercial Loans" (line item SC32);
- "Credit Cards" (line item SC328);
- Other "Consumer Loans" (line items SC310, SC316, SC320, SC323, SC326, and SC330);
- "Other" equity investments not carried at fair value (line item SC540);
- "Interest-Only Strip Receivables and Certain Other Instruments" (line item SC665); and
- "Other Assets" (line item SC689).

Liability categories for which the amount of trading liabilities included in the category would be reported are:

- Federal funds purchased (line items DI630 and DI635);
- "Securities sold under agreements to repurchase" (line item DI641);
- "Mortgage Collateralized Securities Issued: CMOs (including REMICs)" (line item SC740);
- "Other Borrowings" (line item SC760); and
- "Other Liabilities and Deferred Income" (line item SC796).

Other data items the agencies are proposing to collect in the TFR from savings associations that are large institutions or report $10 billion or more in total assets in their June 30, 2011, or a subsequent TFR include:

- Amortized cost and fair value of "U.S. Government, Agency, and Sponsored Enterprise Securities" (line item SC130), with these two amounts reported separately for held-to-maturity and available-for-sale securities;
- Real estate loans secured by farmland (not held for trading) included in loans secured by "Nonresidential Property" (line item SC260);
- Loans to finance agricultural production and other loans to farmers (not held for trading) included in "Secured" and "Unsecured" commercial loans (line items SC300 and SC303);
- "Advances from Federal Home Loan Bank" with a remaining maturity of one year or less (included in line item SC720);
- "Mortgage Collateralized Securities Issued: CMOs (including REMICs)" with a remaining maturity of one year or less (included in line item SC740);
- "Other Borrowings" with a remaining maturity of one year or less (included in line item SC760);
- Commitments to fund commercial real estate, construction, and land development loans secured by real estate (included in line items CC105, CC290, and CC300), with amounts reported separately for (1) 1–4 family residential construction loan commitments and (2) commercial real estate, other construction loan, and land development loan commitments; and
- Deposits in foreign offices, Edge and Agreements subsidiaries, and International Banking Facilities (included in line item SC71).

As mentioned above, these proposed changes to the TFR would revise the reporting requirements for savings associations that are large institutions by adding data items for information not currently collected in the TFR that banks already report in the Call Report. This proposal is consistent with the

agencies' separate proposal to require all savings associations currently filing the TFR to convert to filing the Call Report beginning with the reporting period ending on March 31, 2012.[23] As stated in the agencies' TFR-to-Call Report conversion proposal, "[t]o help reduce the burden with converting reports, the [conversion] proposal would: 1. Curtail all proposed changes to the TFR for 2011 that would increase the differences between the TFR and the Call Report."[24] Although the proposed changes to the TFR discussed above in this section J of the notice are intended to achieve consistency with the Call Report for savings associations that are large institutions, adding these new data items to the TFR in June 2011 has the effect of partially accelerating the conversion to the Call Report by large savings associations. This June 2011 effective date is three quarters sooner than the large savings associations would otherwise be required to report this information in the Call Report upon their proposed conversion from the TFR in March 2012.

[23] 76 FR 7082, February 8, 2011.

[24] 76 FR 7085, February 8, 2011.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: March 7, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 10th day of March, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 10, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–6046 Filed 3–15–11; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Part 240

Clearing Agency Standards for Operation and Governance; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64017; File No. S7–08–11]

RIN 3235–AL13

Clearing Agency Standards for Operation and Governance

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: In accordance with Section 763 of Title VII ("Title VII") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Section 805 of Title VIII ("Title VIII") of the Dodd-Frank Act, and Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"), the Securities and Exchange Commission ("SEC" or "Commission") is proposing rules regarding registration of clearing agencies and standards for the operation and governance of clearing agencies. The proposed rules are designed to enhance the regulatory framework for the supervision of clearing agencies.

DATES: Comments should be submitted on or before April 29, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–8–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–8–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mooney, Assistant Director; Peter Curley, Attorney Fellow; Andrew Blake, Special Counsel; Michael Milone, Special Counsel; Alison Duncan, Attorney-Adviser; Marta Chaffee, Branch Chief; and Andrew Bernstein, Attorney-Adviser, Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010 at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission is proposing seven new rules and an amendment to an existing rule related to clearing agencies, including security-based swap clearing agencies. The proposed rules are designed to enhance the regulatory framework for the supervision of clearing agencies. Specifically, the Commission is proposing to: (1) Identify certain minimum standards for all clearing agencies; (2) require dissemination of pricing and valuation information by security-based swap clearing agencies that perform central counterparty services; (3) require all clearing agencies to have adequate safeguards and procedures to protect the confidentiality of trading information of clearing agency participants; (4) exempt certain security-based swap dealers and security-based swap execution facilities from the definition of a clearing agency; (5) amend rules concerning registration of clearing agencies to account for security-based swap clearing agencies and to make other technical changes; (6) require all clearing agencies to have procedures that identify and address conflicts of interest; (7) require standards for all members of clearing agency boards of directors or committees; and (8) require all clearing agencies to designate a chief compliance officer.

I. Introduction

On July 21, 2010, President Barack Obama signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] Title VII of the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission ("CFTC") with the authority to regulate over-the-counter ("OTC") derivatives in light of the recent financial crisis, which demonstrated the need for enhanced regulation of the OTC derivatives market. The Dodd-Frank Act is intended to bolster the existing regulatory structure and to provide the Commission and the CFTC with effective regulatory tools to oversee the OTC derivatives market, which has grown exponentially in recent years and is capable of affecting significant sectors of the U.S. economy.[3]

The Dodd-Frank Act provides that the CFTC will regulate "swaps," the Commission will regulate "security-based swaps," and the CFTC and the Commission will jointly regulate "mixed swaps."[4] The Dodd-Frank Act amends the Exchange Act to require, among other things, the following: (1) Transactions in security-based swaps must be cleared through a clearing agency if they are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies; (2) transactions in security-based swaps must be reported to a registered security-based swap data repository or the Commission; and (3) if a security-

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *Id.* at Preamble.

[3] *See* 156 Cong. Rec. 5878 (daily ed. July 15, 2010) (statement of Sen. Dodd).

[4] The Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System ("Federal Reserve"), shall jointly further define the terms "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." Public Law 111–203 § 712(d). Except for the term "eligible contract participant", these terms are defined in Sections 721 and 761 of the Dodd-Frank Act. Public Law 111–203 §§ 721, 761. The term "eligible contract participant," is defined in Section 1a(18) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(18), as re-designated and amended by Section 721 of the Dodd-Frank Act. Public Law 111–203 § 721. Further, Sections 721(c) and 761(b) of the Dodd-Frank Act respectively require the CFTC to adopt rules to further define the terms "swap," "swap dealer," "major swap participant," and "eligible contract participant," and permit the Commission to adopt rules to further define the terms "security-based swap," "security-based swap dealer," "major security-based swap participant," and "eligible contract participant," with regard to security-based swaps, for the purpose of including transactions and entities that have been structured to evade Title VII of the Dodd-Frank Act. Public Law 111–203 §§ 721(c), 761(b). Finally, Section 712(a) of the Dodd-Frank Act provides that the Commission and CFTC, after consultation with the Federal Reserve, shall jointly prescribe regulations regarding "mixed swaps," as may be necessary to carry out the purposes of Title VII. Public Law 111–203 § 712(a). Consistent with the Dodd-Frank statutory structure described above, the Commission and CFTC have proposed rules to define these terms. *See* Exchange Act No. 63452 (December 7, 2010), 75 FR 80174 (December 21, 2010).

based swap is subject to a clearing requirement, it must be traded on a registered trading platform, *i.e.,* a security-based swap execution facility or exchange, unless no facility makes such security-based swap available for trading.[5]

Beginning in December of 2008, the Commission acted to facilitate the clearing of OTC security-based swaps by permitting certain clearing agencies to clear credit default swaps ("CDS") on a temporary conditional basis.[6] Consequently, a significant volume of security-based swaps in the form of CDS transactions are centrally cleared today, and the Commission oversees those activities pursuant to the CDS Clearing Exemption Orders.[7]

II. Prescribed Rulemaking for Clearing Agencies

A. Title VII of Dodd-Frank Act

Title VII of the Dodd-Frank Act added new provisions to the Exchange Act that require clearing agencies that clear security-based swaps ("security-based swap clearing agencies") to register with the Commission[8] and require the Commission to adopt rules with respect to security-based swap clearing agencies.[9]

Specifically, new Section 17A(j) of the Exchange Act requires the Commission to adopt rules governing security-based swap clearing agencies.[10] New Section 17A(i) of the Exchange Act also gives the Commission authority to promulgate rules that establish standards for security-based swap clearing agencies.[11] Compliance with any such rules is a prerequisite to the registration of a clearing agency with the Commission and is also a condition to the maintenance of that security-based swap clearing agency's continued registration.[12]

B. Payment, Clearing, and Settlement Supervision Act of 2010

Title VIII of the Dodd-Frank Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act"), establishes an enhanced supervisory and risk control system for systemically important clearing agencies and other financial market utilities ("FMUs").[13] It provides that the Commission may prescribe regulations containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for any designated clearing entities it regulates.[14] The Council has not to date made any designations with respect to whether any FMU is, or is likely to become, systemically important;[15] however, the

[5] Section 761 of the Dodd-Frank Act adds Section 3(a)(77) to the Exchange Act, which defines the term "security-based swap execution facility" to mean "a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that (A) facilitates the execution of security-based swaps between persons; and (B) is not a national securities exchange." *See* Public Law 111–203 § 761. The decision of a security-based swap execution facility or exchange to list a security-based swap contract for trading may not be sufficient to establish that the contract is "made available for trading" by that security-based swap execution facility or exchange and therefore cannot be traded in the over-the-counter market. *See* Exchange Act Release No. 63825 (February 2, 2011), 76 FR 10948 (February 28, 2011). The Dodd-Frank Act amends the CEA to provide for a similar regulatory framework with respect to transactions in swaps regulated by the CFTC.

[6] The Commission authorized five entities to clear credit default swaps. *See* Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009), 61973 (April 23, 2010), 75 FR 22656 (April 29, 2010) and 63389 (November 29, 2010), 75 FR 75520 (December 3, 2010) (CDS clearing by ICE Clear Europe Limited); 60373 (July 23, 2009), 74 FR 37740 (July 29, 2009), 61975 (April 23, 2010), 75 FR 22641 (April 29, 2010) and 63390 (November 29, 2010), 75 FR 75518 (December 3, 2010), (CDS clearing by Eurex Clearing AG); 59578 (March 13, 2009), 74 FR 11781 (March 19, 2009), 61164 (December 14, 2009), 74 FR 67258 (December 18, 2009), 61803 (March 30, 2010), 75 FR 17181 (April 5, 2010) and 63388 (November 29, 2010), 75 FR 75522 (December 3, 2010) (CDS clearing by Chicago Mercantile Exchange Inc.); 59527 (March 6, 2009), 74 FR 10791 (March 12, 2009), 61119 (December 4, 2009), 74 FR 65554 (December 10, 2009), 61662 (March 5, 2010), 75 FR 11589 (March 11, 2010) and 63387 (November 29, 2010) 75 FR 75502 (December 3, 2010) (CDS clearing by ICE Trust US LLC); 59164 (December 24, 2008), 74 FR 139 (January 2, 2009) (temporary CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) (collectively, "CDS Clearing Exemption Orders"). LIFFE A&M and LCH.Clearnet Ltd. allowed their order to lapse without seeking renewal.

[7] Most cleared CDS transactions have cleared at ICE Trust US LLC ("ICE Trust") or ICE Clear Europe Limited ("ICE Clear Europe"). However, Eurex Clearing AG ("Eurex") and the Chicago Mercantile Exchange Inc. ("CME") are also authorized to operate pursuant to the CDS Clearing Exemption Orders. As of October 8, 2010, ICE Trust had cleared approximately $7.1 trillion notional amount of CDS contracts based on indices of securities and approximately $490 billion notional amount of CDS contracts based on individual reference entities or securities. As of October 8, 2010, ICE Clear Europe had cleared approximately €3.09 trillion notional amount of CDS contracts based on indices of securities and approximately €560 billion notional amount of CDS contracts based on individual reference entities or securities. *See https://www.theice.com/marketdata/reports/ReportCenter.shtml.* The Commission has obtained data from The Depository Trust and Clearing Corporation on new and assigned CDS trades in United States Dollars during the month of November 2010 for ICE Trust. Cleared CDS trades represented a small fraction of total trades. Specifically, cleared trades were 5.24% by notional amount of all new or assigned single name trades, and 20.69% by notional amount of all new or assigned index trades.

[8] Public Law 111–203 § 763(b) (adding subparagraph (g) to Section 17A of the Exchange Act. Pursuant to Section 774 of the Dodd-Frank Act, the requirement in Section 17A(g) of the Exchange Act for securities-based swap clearing agencies to be registered with the Commission takes effect on July 16, 2011).

[9] Public Law 111–203 § 763(b) (adding subparagraphs (i) and (j) to Section 17A of the Exchange Act).

[10] Public Law 111–203 § 763(b) (adding subparagraph (j) to Section 17A of the Exchange Act). *See also* Public Law 111–203 § 774 of the Dodd-Frank Act (requiring that the provisions of Title VII take effect on the later of 360 days after the date of the enactment or, to the extent a provision of Title VII requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision).

[11] Public Law 111–203 § 763(b) (adding subparagraph (i) to Section 17A of the Exchange Act).

[12] Under the Exchange Act, a clearing agency can be registered with the Commission only if the Commission makes a determination that the clearing agency satisfies the requirements set forth in paragraphs (A) through (I) of Section 17A(b)(3) of the Exchange Act.

[13] *See supra* note 1. Under Section 803 of the Clearing Supervision Act, clearing agencies may be FMUs. Therefore, the Commission may be the Supervisory Agency of a clearing agency that is designated as systemically important ("designated clearing entities") by the Financial Stability Oversight Council ("Council"). *See* 12 U.S.C. 5463. The definition of "FMU," which is contained in Section 803(6) of the Clearing Supervision Act, contains a number of exclusions including, but not limited to, designated contract markets, registered futures associations, swap data repositories, swap execution facilities, national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, security-based swap execution facilities, brokers, dealers, transfer agents, investment companies and futures commission merchants. 12 U.S.C. 5462(6)(B). The designation of systemic importance hinges on a determination by the Council that the failure of, or a disruption to, the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. *See* 12 U.S.C. 5463(a)(2)(A)–(E). The designation of an FMU is significant, in part, because it will subject such designated entity to heightened oversight consistent with the terms of the Clearing Supervision Act. For example, the Clearing Supervision Act requires the Supervisory Agency to examine at least once annually any FMU that the Council has designated as systemically important. The Commission intends to conduct such annual statutory cycle examinations on the Commission's fiscal year basis. The Commission staff anticipates conducting the first annual statutory cycle examination of any designated FMU for which it is the Supervisory Agency in the annual cycle following such designation.

[14] *See* Section 805(a)(2) of the Clearing Supervision Act. Those regulations may govern "(A) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and (B) the conduct of designated activities by such financial institutions." 12 U.S.C. 5464(a)(2).

[15] *See* 12 U.S.C 5321 (among other things establishing the Council and designating its voting and nonvoting members. In accordance with Section 804 of the Clearing Supervision Act, the Council has the authority, on a non-delegable basis and by a vote of not fewer than two-thirds of the members then serving, including the affirmative vote of its chairperson, to designate those FMUs that the Council determines are, or are likely to become, systemically important. The Council may,

Continued

Commission believes it is beneficial to consider the requirements of the Clearing Supervision Act in its proposed rules for clearing agencies because the Clearing Supervision Act may apply to one or more clearing agencies in the future and the Commission preliminarily believes that its goals are consistent with the goals of Section 17A of the Exchange Act. Specifically, Congress recognized in the Clearing Supervision Act that the operation of multilateral payment, clearing or settlement activities may reduce risks for clearing participants and the broader financial system, while at the same time creating new risks that require multilateral payment, clearing or settlement activities to be well-designed and operated in a safe and sound manner.[16] The Clearing Supervision Act is designed, in part, to provide a regulatory framework to help deal with such risk management issues, which is generally consistent with the Exchange Act requirement that clearing agencies be organized in a manner so as to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors.[17]

C. Section 17A of Exchange Act

As noted above, in addition to the new authority provided to the Commission under Titles VII and VIII of the Dodd-Frank Act, the Commission has existing authority over clearing agencies under the Exchange Act. For example, entities are required to register with the Commission pursuant to Section 17A of the Exchange Act[18] and Rule 17Ab2–1,[19] prior to performing the functions of a clearing agency. Under this registration system, the Commission is not permitted to grant registration unless it determines that the rules and operations of the clearing agency meet the standards set forth in Section 17A.[20] If a clearing agency is granted registration, the Commission oversees the clearing agency to facilitate compliance with the Exchange Act through the rule filing process for self-regulatory organizations ("SROs") and through on-site examinations by Commission staff. Section 17A also gives the Commission authority to adopt rules for clearing agencies as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act and prohibits a registered clearing agency from engaging in any activity in contravention of these rules and regulations.[21]

III. Proposed Rules Governing Clearing Agencies

The Commission is proposing several new rules that would set standards for the operation and governance of clearing agencies. As noted above, the Dodd-Frank Act specifically gives the Commission authority to regulate security-based swaps[22] and to adopt regulations addressing risk management standards for designated clearing entities that the Commission regulates. In addition to considering this specific directive in formulating the proposed rules, the Commission preliminarily believes that applying certain rules to all clearing agencies would promote financial stability, one of the goals of the Dodd-Frank Act, by facilitating prompt and accurate clearance and settlement of all securities transactions consistent with Section 17A of the Exchange Act while promoting the Dodd-Frank Act's stated aims of accountability and transparency.

The types of clearing agencies that are subject to the proposed rules can be divided into four different categories: (i) Clearing agencies that offer central counterparty ("CCP") services for transactions in securities that are not security-based swaps, (ii) clearing agencies that offer CCP services for transactions in securities that are security-based swaps; (iii) clearing agencies that provide non-CCP services for transactions in securities that are not security-based swaps; and (iv) clearing agencies that provide non-CCP services for transactions in securities that are security-based swaps. The table below illustrates how the proposed rules would apply to different types of clearing agencies. In general, as illustrated in column "A" in the table, clearing agencies offering CCP services (regardless of whether they offer those services for transactions in securities that are or are not security-based swaps) would be subject to most of the proposed rules.[23] Clearing agencies that offer only non-CCP services would only be subject to certain of the proposed rules, depending on whether they offer those services for transactions in securities that are not security-based swaps (as illustrated in column "B" in the table)[24] or that are security-based swaps (as illustrated in column "C" in the table).

APPLICATION OF PROPOSED RULES TO CLEARING AGENCIES

	A CCP Clearing Services for Securities that are or are not Security-Based Swaps ("SBS")	*B* Non-CCP Clearing Services in Securities that are not SBS	*C* Non-CCP Clearing Services for Securities that are SBS
17Ad–22(b)(1): Measurement and management of credit exposures	○		
17Ad–22(b)(2): Margin requirements	○		
17Ad–22(b)(3): Financial resources	○		
17Ad–22(b)(4): Model validation	○		

using the same procedures as discussed above, rescind such designation if it determines that the FMU no longer meets the standards for systemic importance. Before making either determination, the Council is required to consult with the Federal Reserve and the relevant Supervisory Agency as determined in accordance with Section 803(8) of the Clearing Supervision Act). *See also* Section 804 setting forth the procedures for giving entities 30 days advance notice and the opportunity for a hearing prior to being designated as systemically important. 12 U.S.C. 5463.

[16] 12 U.S.C. 5461(a)(2).

[17] *See* 15 U.S.C. 78q–1(b)(3)(A).

[18] *See* 15 U.S.C. 78q–1(b). *See also* Public Law 111–203 § 763(b) (adding subparagraph (g) to Section 17 of the Exchange Act).

[19] *See* 17 CFR 240.17b2–1.

[20] Specifically, Sections 17A(b)(3)(A)–(I) identify determinations that the Commission must make about the rules and structure of a clearing agency prior to granting registration. *See* 15 U.S.C. 78q–1(b)(3)(A)–(I). The staff of the Commission provided guidance on meeting the requirements of Section 17A in its Announcement of Standards for the Registration of Clearing Agencies. *See* Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[21] *See* 15 U.S.C. 78q–1(d).

[22] *See supra* note 4.

[23] As noted in the table, proposed Rule 17Aj–1 would only apply to CCPs for security-based swap transactions.

[24] Within this category, as illustrated in column "B", the proposed rules distinguish between clearing agencies that provide central securities depository services, and those that do not.

APPLICATION OF PROPOSED RULES TO CLEARING AGENCIES—Continued

	A CCP Clearing Services for Securities that are or are not Security-Based Swaps ("SBS")	*B* Non-CCP Clearing Services in Securities that are not SBS	*C* Non-CCP Clearing Services for Securities that are SBS
17Ad–22(b)(5): Non-dealer access	○		
17Ad–22(b)(6): Portfolio size and transaction volume thresholds restrictions	○		
17Ad–22(b)(7): Net capital restrictions	○		
17Ad–22(c)(1): Records of financial resources	○		
17Ad–22(c)(2): Audited financial statements	○	○	○
17Ad–22(d)(1): Transparent and enforceable rules	○	○	○
17Ad–22(d)(2): Participation requirements	○	○	○
17Ad–22(d)(3): Custody of assets and investment risk	○	○	○
17Ad–22(d)(4): Identification and mitigation of operational risk	○	○	○
17Ad–22(d)(5): Money settlement risks	○	○	○
17Ad–22(d)(6): Cost-effectiveness	○	○	○
17Ad–22(d)(7): Links	○	○	○
17Ad–22(d)(8): Governance	○	○	○
17Ad–22(d)(9): Information on services	○	○	○
17Ad–22(d)(10): Immobilization and dematerialization of stock certificates		Would Only Apply to Clearing Agencies that Provide Central Securities Depository ("CSD") Services	
17Ad–22(d)(11): Default procedures	○	○	○
17Ad–22(d)(12): Timing of settlement finality	○	○	
17Ad–22(d)(13): Delivery versus payment	○	○	
17Ad–22(d)(14): Controls to address participants' failure to settle		Would Only Apply to Clearing Agencies that Provide CSD Services	
17Ad–22(d)(15): Physical delivery risks	○	○	
17Aj–1: Dissemination of pricing and valuation information	Would Only Apply to Clearing Agencies that Provide CCP Services for SBS		
17Ad–23: Policies and procedures to protect confidentiality of trading information of participants	○	○	○
Amendments to Rule 17Ab2–1: Registration of clearing agencies	○	○	○
17Ad–25: Procedures to identify and address conflicts of interests	○	○	○
17Ad–26: Standards for board or board committee directors	○	○	○
3Cj–1: Designation of chief compliance officer	○	○	○

A. Proposed Rule 17Ad–22 Standards for All Clearing Agencies

The Commission is proposing Rule 17Ad–22 to augment the statutory requirements under the Exchange Act by establishing minimum requirements regarding how clearing agencies must maintain effective risk management procedures and controls as well as meet the statutory requirements under the Exchange Act on an ongoing basis. For a clearing agency to be registered under Section 17A, it must have the ability to facilitate the prompt and accurate clearance and settlement of transactions, safeguard investor funds and securities, remove impediments to and perfect the mechanism of a national clearance and settlement system, and generally protect investors.[25] Also, the clearing agency's rules must provide adequate access to qualified participants, fair representation of shareholders and participants, equitable pricing, fair discipline of participants, and must not impose any undue burden on competition.[26] Section 17A of the Exchange Act explicitly provides the Commission with discretion to update the rules for clearing agencies consistent with the Exchange Act.[27] Further, Section 805(a) of the Dodd-Frank Act directs the Commission to take into consideration relevant international standards and existing prudential requirements for clearing agencies that are designated as FMUs.[28] The current international standards most relevant to risk management of clearing agencies are the standards developed by the Technical Committee of the International Organization of Securities Commissions ("IOSCO") and the Committee on Payment and Settlement Systems ("CPSS") of the Bank for International Settlements that are contained in the following reports: *Recommendations for Securities Settlement Systems* (2001) ("RSSS"), and *Recommendations for Central Counterparties* (2004) ("RCCP") (collectively "CPSS–IOSCO Recommendations").[29]

The Commission preliminarily believes that certain aspects of the CPSS–IOSCO Recommendations should be made to clearly apply to clearing agencies and that such application would further the objectives and principles for clearing agencies under the Exchange Act and the Dodd-Frank Act, including those that are related to sound risk management practices and to fair and open access. These international standards were formulated by securities regulators and central banks to promote sound risk-management practices and encourage the safe design and operation of entities that provide clearance and settlement services. The Commission is proposing Rule 17Ad–22 (which is consistent with the CPSS–IOSCO Recommendations but reflects modifications designed to tailor the proposed rule to the Exchange Act and the U.S. clearance and settlement system) because the Commission preliminarily believes that the rule would help to facilitate prompt and accurate clearance and settlement, safeguard securities and funds and protect investors.[30]

The Commission preliminarily believes that the adoption of proposed Rule 17Ad–22, which is based on the CPSS–IOSCO Recommendations, and the application of this rule to all clearing agencies would have several important benefits, including providing a robust framework for assessing and addressing the risks within clearing agencies. The Commission requests comment on proposed Rule 17Ad–22 and the consideration of the CPSS–IOSCO Recommendations in connection with the proposed rule. The Commission also requests comment on whether the proposed rules are properly tailored to assess and address the risks at clearing agencies and whether they are sufficiently clear to enable clearing agencies to reasonably determine whether they are in compliance with the rules or whether the Commission should provide additional guidance.[31]

The Commission notes that IOSCO and the CPSS are currently in the process of revising their existing sets of international standards.[32] This review is intended to strengthen and clarify the CPSS–IOSCO Recommendations, as well as the CPSS's existing standards for payment systems entitled: *Core Principles for Systemically Important Payment Systems.* The Commission may, as international standards evolve, consider additional modifications to its rules as the Commission determines is appropriate based on its own experience and the requirements under the Exchange Act.

Proposed Rule 17Ad–22 contains certain additional requirements that are not addressed or contemplated by international standards. For clearing agencies that perform CCP services, these additional requirements are found in the following proposed rules: (1) Rule 17Ad–22(b)(3), which would require heightened financial resources for clearing agencies that provide CCP services for securities that are security-based swaps; (2) Rule 17Ad–22(b)(5), which would prohibit membership restrictions based on dealer status; (3) Rule 17Ad–22(b)(6), which would prohibit membership restrictions based on minimum volume and transaction thresholds; (4) Rule 17Ad–22(b)(7), which would prohibit restrictions on clearing agency membership based on minimum net capital requirements of $50 million or more; and (5) Rule 17Ad–22(c)(1), which would require calculation and maintenance of records of the clearing agency's financial resources. [33]

In addition, the Commission is proposing additional rules for all clearing agencies (whether or not they offer CCP services) that are not addressed or contemplated by the international standards. These proposed rules would: (1) Require dissemination of pricing and valuation information by security-based swap clearing agencies that perform CCP services (Proposed Rule 17Aj–1); (2) require all clearing agencies to have adequate safeguards and procedures to protect the confidentiality of trading information of

[25] *See* 15 U.S.C. 78q–1.

[26] *See id.*

[27] *See id.*

[28] 12 U.S.C. 5464(a)(1).

[29] The complete RSSS and RCCP Reports are available on the Web site of the Bank for International Settlements at *http://www.bis.org/publ/cpss46.htm* and *http://www.bis.org/publ/cpss64.htm* respectively.

The RSSS and RCCP Reports were drafted by IOSCO and CPSS ("Task Force"). The Task Force consisted of securities regulators and central bankers from 19 countries (*i.e.,* Australia, Belgium, Brazil, China, Czech Republic, France, Germany, Hong Kong, India, Italy, Japan, Malaysia, Mexico, The Netherlands, Saudi Arabia, Singapore, Spain, England, and the United States) and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve, and the CFTC. The Federal Reserve has incorporated the RSSS and RCCP, as well as the Core Principles for Systemically Important Payment Systems, in its Federal Reserve Policy on Payment System Risk. The Federal Reserve applies these standards in its supervisory process and expects systemically important systems, as determined by the Federal Reserve and subject to its authority, will complete a self-assessment against the standards set forth in the policy. *See* Policy on Payment System Risk, 72 FR 2518 (January 12, 2007).

[30] *See* 15 U.S.C. 78q–1(d).

[31] Several clearing agencies have published their evaluations of their compliance with the CPSS–IOSCO Recommendations on their Web sites. *See http://www.dtcc.com/legal/compliance/assessments.php.* In addition, several clearing agencies, as part of requests for the CDS Clearing Exemption Orders, have represented to the Commission that they met the standards set forth in the RCCP. *See supra* note 6.

[32] In December 2009, IOSCO and CPSS began a comprehensive review of existing standards for FMUs, which includes the RSSS and RCCP. This review intends to strengthen and clarify the standards based on experience with the standards since their publication and specifically from lessons learned during the recent financial crisis.

[33] Proposed Rule 17Ad–22(c)(2) would apply to all clearing agencies and require them to post annual audited financial reports on their Web sites.

clearing agency participants (Proposed Rule 17Ad–23); (3) exempt certain security-based swap dealers and security-based swap execution facilities from the definition of a clearing agency (Proposed Rule 17Ad–24); (4) amend rules concerning registration of clearing agencies to account for security-based swap clearing agencies and to make other technical changes (Rule 17Ab2–1); (5) require all clearing agencies to have procedures that identify and address conflicts of interest (Proposed Rule 17A–25); (6) require clearing agencies to set standards for all members of their boards of directors or committees (Proposed Rule 17Ad–26); and (7) require all clearing agencies to designate a chief compliance officer (Proposed Rule 3Cj–1).

1. Proposed Rule 17Ad–22(a)

Proposed Rule 17Ad–22(a) contains five definitions. Proposed Rule 17Ad–22(a)(1) would define CCP as a clearing agency that interposes itself between counterparties to securities transactions to act functionally as the buyer to every seller and as the seller to every buyer. Proposed Rule 17Ad–22(a)(2) would define "central securities depository services" to mean services of a clearing agency that is a securities depository as described in Section 3(a)(23) of the Exchange Act.[34] Proposed Rule 17Ad–22(a)(3) would define "participant", for the limited purposes of proposed Rules 17Ad–22(b)(3) and 17Ad–22(d)(14), to mean that if a participant controls another participant, or is under common control with another participant, then the affiliated participants shall be collectively deemed to be a single participant. Proposed Rule 17Ad–22(a)(4) would define "normal market conditions", for the limited purposes of proposed Rules 17Ad–22(b)(1) and (2), to mean conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time. Proposed Rule 17Ad–22(a)(5) would define "net capital", for the limited purposes of proposed Rule 17Ad–22(b)(7), to have the same meaning as set forth in Rule 15c3–1 under the Exchange Act for broker-dealers or any similar risk adjusted capital calculation for all other prospective clearing members.[35]

The Commission preliminarily believes that these five proposed definitions would be consistent with the common meaning of these terms as understood in the clearance and settlement industry. In addition, the Commission preliminarily believes the definition of "normal market conditions" would be consistent with international use of that term in the context of clearing agency risk management.[36] The Commission intends for these definitions to provide clearing agencies with appropriate guidance to determine when requirements under proposed Rule 17Ad–22 would apply. The Commission requests comment on the proposed definitions, including whether any additional clarification would be helpful.

2. Proposed Rule 17Ad–22(b)

Proposed Rule 17Ad–22(b) would set forth standards that are applicable to clearing agencies that provide CCP services. Specifically, the proposed rule would provide standards with respect to measurement and management of credit exposures, margin requirements, financial resources, and annual evaluations of the performance of the clearing agency's margin models. The proposed rule would also require membership access to clearing agencies for persons that are not dealers or security-based swap dealers, prohibit the use of minimum portfolio size and minimum volume transaction thresholds as a condition for membership at a clearing agency, and permit membership access to a clearing agency by persons with net capital equal to or greater than $50 million. The discussion below provides greater detail regarding each respective standard covered in proposed Rule 17Ad–22(b). The proposed rule is designed to address risks and participant membership structures that are specifically linked to the provision of services associated with a clearing agency interposing itself between counterparties to securities transactions and acting functionally as the buyer to every seller and the seller to every buyer (*i.e.,* CCP services). Accordingly, the Commission preliminarily believes that these requirements would not need to apply to clearing agencies that do not provide CCP services because they would not be engaged in activities that the proposed rule is designed to address.

The Commission preliminarily believes that proposed Rule 17Ad–22(b) would provide standards designed to help ensure sound risk management practices at clearing agencies providing CCP services. Further, the Commission preliminarily believes that the requirements of proposed Rule 17Ad–22(b) would help ensure that the rules, policies and procedures of a clearing agency providing CCP services will be designed to promote fair and open access, to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible.

Proposed Rule 17Ad–22(b)(1): Measurement and Management of Credit Exposures

Proposed Rule 17Ad–22(b)(1) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once each day, and limit its exposures to potential losses from defaults by its participants in normal market conditions[37] so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

The Commission preliminarily believes that measurement and management of credit exposures can, among other things, reduce the likelihood in a participant default scenario that losses from default would disrupt the operations of the clearing agency and its non-defaulting participants and adversely affect the functioning of the clearing agency. A clearing agency providing CCP services faces the risk that its exposures to participants can change dramatically as a result of changes in prices, in positions, or both. Adverse price

[34] [Clearing agency] also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. 15 U.S.C. 78c(a)(23).

[35] As appropriate, the clearing agency would develop risk adjusted capital calculations for prospective clearing members that are not broker-dealers.

[36] In the context of the RCCP, "normal market conditions" means conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time. *See* CPSS Publications *Recommendations for Central Counterparties,* (November 2004), *available at http://www.bis.org/publ/cpss64.htm.*

[37] *See supra* note 36.

movements can rapidly increase exposures to participants, and participants may rapidly change or concentrate their positions through new trading. If not appropriately measured and managed, such results could lead to significant liabilities accruing at the clearing agency.

Recognizing that the risks that clearing agencies are likely to face will change over time, the Commission is proposing that a clearing agency providing CCP services be required to measure its credit exposures to its participants at least once each day. The Commission preliminarily believes this is the minimum frequency of measurement that would permit a clearing agency to effectively consider the risks it faces because of the potential for significant changes to the risk profiles of its participants to change on a daily basis.

In addition to requiring clearing agencies to take steps to measure their credit exposures to participants, the proposed rule would also require clearing agencies to limit their exposures to potential losses from participant defaults. By collecting sufficient margin and having other resources in place to account for losses arising under normal market conditions, the Commission expects that a clearing agency would be able to limit its exposures to potential losses from defaults by its participants. The Commission preliminarily believes that the proposed rule should thereby help ensure prompt and accurate clearance and settlement.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(1). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding measurement and management of credit exposures sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices of clearing agencies providing CCP services with respect to measurement and management of credit exposures compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies providing CCP services in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?
- Should the Commission require clearing agencies acting as CCPs to use any specific confidence level for limiting potential losses under the proposed rule when clearing certain products, or to use minimum amounts of market data when calculating credit exposures? Why or why not?
- What level of discretion should the Commission allow clearing agencies providing CCP services to exercise when measuring and managing credit exposure? Are there circumstances when such discretion should be limited?
- Is it more difficult for clearing agencies providing CCP services and their participants to anticipate and control losses associated with certain types of financial products compared to others? If so, how should the Commission take this into account when establishing rules for clearing agency standards? For example, should the Commission require additional risk management measures to be applied by clearing agencies providing CCP services when judging the risks associated with financial products that trade infrequently or when valuation models for the product are not yet broadly accepted in the financial market? Why or why not?
- Extremely illiquid security-based swap products may be difficult to clear under a conventional CCP clearing model because it may be difficult to value them with a degree of accuracy that allows the CCP to properly manage the risk of those positions. Should the Commission explore developing alternatives to the requirements contained in proposed Rule 17Ad–22(b)(1) based on the liquidity of products a clearing agency clears? What effect would any such requirements have on the potential development of alternative clearing models for highly-illiquid products that would convey some of the benefits of clearing (such as centralized holding of collateral by a third-party custodian, daily adjustment of variation margin amounts, daily posting and return of variation margin, independent valuation of positions, and prompt close-out of positions held by a defaulting market participant)?
- Should the Commission consider requiring clearing agencies that provide CCP services to measure exposures to participants more or less frequently than a minimum of once daily?

Proposed Rule 17Ad–22(b)(2): Margin Requirements

Proposed Rule 17Ad–22(b)(2) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) Use margin requirements to limit its credit exposures to participants in normal market conditions; [38] (ii) use risk-based models and parameters to set margin requirements; and (iii) review the models and parameters at least monthly.

The Commission preliminarily believes that use of margin requirements by clearing agencies providing CCP services to collect assets (*e.g.,* cash or securities) from its participants as a way to limit exposures to participants in normal market conditions would, among other things, provide the clearing agency with assets it could readily use to limit losses incurred by a participant in the event of a default. By limiting its credit exposure in this manner, a clearing agency providing CCP services would be less likely to be subject to disruptions in its operations as a result of a participant default, thereby promoting prompt and accurate clearance and settlement.

The Commission also preliminarily believes that risk-based models and parameters should be used to set margin requirements because they permit a clearing agency providing CCP services to tailor the amount of margin collected to the needs of the clearing agency. Specifically, models and parameters for collecting margin that account for the risks the clearing agency providing CCP services faces when transacting with a participant may be more likely to result in effective and efficient margin requirements because the level of margin collected would be commensurate with the level of risk presented by the participant to the clearing agency.

In addition, the Commission preliminarily believes that the review of these models and parameters should be required to occur at least monthly. Market conditions and risks are constantly changing and therefore the models and parameters used by a clearing agency providing CCP services to set margin may not accurately reflect the needs of a clearing agency if they are permitted to remain static. The Commission recognizes, however, that there may be benefits to maintaining some stability with respect to margin levels in order to limit operational difficulties. Accordingly, the Commission is proposing that clearing agencies providing CCP services be required to review their models and parameters at least monthly because the Commission preliminarily believes that such time frame would limit the potential that such parameters or models will become stale while also providing the clearing agency flexibility to maintain some stability with respect

[38] *See supra* note 36.

to determinations for margin requirements.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(2). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding margin requirements sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices of clearing agencies regarding margin requirements compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?
- Should the Commission require clearing agencies providing CCP services to impose any special margin or intraday margin requirements in certain circumstances? Are there circumstances when special margin or intraday margining would not be appropriate? Why or why not?
- Should the Commission allow clearing agencies providing CCP services to exercise significant discretion when establishing margin practices? Why or why not? Are there circumstances when such discretion should be limited? Is there a risk that clearing agencies providing CCP services may lower margin standards to compete for business? If so, how should the Commission take such factors into account when establishing rules for clearing agencies providing CCP services?
- Should the Commission consider requiring a clearing agency that provides CCP services to review its margin model and parameters more or less frequently than at least monthly?

Proposed Rule 17Ad–22(b)(3): Financial Resources

Proposed Rule 17Ad–22(b)(3) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions, provided that a security-based swap clearing agency shall maintain sufficient financial resources to withstand, at a minimum, a default by the two participants to which it has the largest exposures in extreme but plausible market conditions.[39]

The Commission preliminarily believes that requiring a clearing agency, other than a security-based swap clearing agency, that provides CCP services to maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions would, among other things, reduce the likelihood that a default would create losses that would disrupt the operations of the clearing agency and adversely affect the clearing agency's non-defaulting participants. However, the Commission preliminarily believes that security-based swap clearing agencies that provide CCP services face additional risk-management challenges because of factors unique to the security-based swaps market, such as more limited historical information on pricing and the jump-to-default risk[40] associated with certain security-based swaps, such as CDS. The Commission preliminarily believes that to promote prompt and accurate clearance and settlement and maintain higher levels of financial resources to account for these risks, it is important for security-based swap clearing agencies that provide CCP services to be able to withstand a default by the two participants to which the clearing agency has its largest exposures in extreme but plausible market conditions. Moreover, the Commission expects that when a clearing agency that provides CCP services determines what level of financial resources would be sufficient to account for exposures in extreme but plausible market conditions, the clearing agency would consider potential losses that would be greater than those resulting from observed periods of significant volatility or disturbances.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(3). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding requiring clearing agencies providing CCP services to maintain sufficient financial resources sufficiently clear? If not, why not and what would be a better alternative?
- Should the Commission require all clearing agencies providing CCP services, instead of only those clearing security-based swaps, to maintain sufficient financial resources to withstand a default by the two participants to which it has the largest exposures in extreme but plausible market conditions? Should all or any subset of clearing agencies be required to maintain sufficient financial resources based on more or less than two participant defaults? For example, should the financial resources requirements be different for certain clearing agencies, such as security-based swap clearing agencies or those designated as systemically important under the Clearing Supervision Act? Should the Commission require that financial resources be measured based on a different standard than resources needed to withstand default by a certain number of participants, such as a percentage of the total business conducted by the clearing agency?
- How do current practices of clearing agencies pertaining to financial resources compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?
- Are the financial resources standards for clearing agencies providing CCP services proposed by the Commission sufficient for the proper functioning of a clearing agency? Should a clearing agency providing CCP services be able to mutualize losses during a default using financial resources designed to cover price movements? Should the Commission establish more specific rules? For example, should the Commission establish standards for the level of clearing agency resources maintained in a guarantee fund as opposed to a margin fund, or should clearing agencies providing CCP services be given discretion to manage the composition of their financial resources as they see fit? Why or why not? Should the Commission establish more prescriptive requirements concerning the financial resources of certain clearing agencies providing CCP services, such as those

[39] *See* proposed Rule 17Ad–22(a)(3), *supra* Section II.A.1 (defining "participant" for purposes of proposed Rule 17Ad–22(b)(3)).

[40] Jump-to-default risk relates to the possibility of a reference entity unexpectedly experiencing a credit event over a short period resulting in significant changes in the value of any CDS contracts written on that particular reference entity. For example, a seller of a CDS could be collecting regular premiums with little expectation that the reference entity may default. However, if that reference entity suddenly experiences a credit event, it will trigger an unexpected obligation on the protection seller to pay a lump sum, dependent on the size of the contract, to the protection buyer. *See generally* Darrell Duffie and Haoxiang Zhu, *Does a Central Clearing Counterparty Reduce Counterparty Risk?* (Stanford Univ. 2010), *available at http://www.stanford.edu/~duffie/DuffieZhu.pdf.*

that clear security-based swaps or those that are designated as systemically important under the Clearing Supervision Act?

• Should the Commission provide additional guidance regarding what constitutes "extreme but plausible market conditions"? Does allowing clearing agencies providing CCP services discretion to interpret this term create uncertainty or introduce more risk into the financial system than might otherwise be the case?

• What are clearing agencies' providing CCP services and their participants' incentives to maintain financial resources to withstand the foreseeable consequences of participant defaults? Are there identifiable circumstances in which these self-interested incentives may vary? For example, do clearing agencies providing CCP services with public shareholders have different incentives than clearing agencies providing CCP services that are member-owned? Can the capital structure of the clearing agency providing CCP services and the order in which losses are suffered by defaulting parties, surviving participants and any public shareholders affect the level of risk accepted by the clearing agency? If so, how should the Commission take these factors into account when establishing rules for clearing agencies providing CCP services?

Proposed Rule 17Ad–22(b)(4): Model Validation

Proposed Rule 17Ad–22(b)(4) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation process consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to a person who performs these functions.[41]

The Commission preliminarily believes that clearing agencies that provide CCP services need to have a qualified person conduct a review of models that are used to set margin levels, along with related parameters and assumptions, in order to assure that the models perform in a manner that facilitates prompt and accurate clearance and settlement of transactions. In determining whether a person is qualified to conduct the model validation, clearing agencies providing CCP services could consider several factors, including the person's experience in validating margin models, expertise in risk management generally, and understanding of the clearing agency's operations and procedures.

In addition, the Commission is proposing that the person conducting the model validation be a person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to a person who performs these functions. The Commission preliminarily believes that a review by a person who is not involved in the day-to-day operation of the margin model is important to identify potential vulnerabilities or limitations and to promote a critical evaluation of the model. This is because a person involved in the functions related to the model's operation, or someone who reports to such a person, may be less likely to critically evaluate the margin model because of preconceived views or a desire not to find issues with a model that they help to operate.[42] The Commission preliminarily believes that the person validating the clearing agency's margin model should be sufficiently free from outside influences so that he or she can be completely candid in their assessment of the model.

Finally, the Commission is proposing that the model validation be conducted on an annual basis. The Commission preliminarily believes that conducting the model validation on an annual basis would provide a sufficiently frequent evaluation period because model performance ordinarily would not be expected to vary significantly over short periods but should be re-evaluated as market conditions change.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(4). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule requiring clearing agencies to provide for a model validation sufficiently clear? If not, why not and what would be a better alternative?

• What are the advantages and disadvantages of requiring an annual model validation? Should a more or less frequent model validation be required? Should the model validation be specifically triggered as a result of any material change in the clearing agency, such as the introduction of new products or the addition of portfolio margining arrangements with other clearing agencies?

• Should the Commission place more or less stringent restrictions on the type of person who is permitted to conduct the model validation? For example, should the Commission prescribe any specific qualifications that the person conducting the model validation should have? Should the Commission require an outside consultant be engaged to conduct the model validation? Should persons that perform functions associated with the clearing agency's margin model be able to conduct the model validation?

• Does the proposal provide sufficient or excessive separation of the person conducting the model validation from the persons who develop and administer the model? In either case, please explain. Should the Commission adopt additional requirements to help ensure that the persons conducting the model validation are free from retaliation and influence? If so, please explain. What costs or burdens might such additional requirements impose on the effective validation of models?

Proposed Rule 17Ad–22(b)(5): Non-Dealer Member Access

Proposed Rule 17Ad–22(b)(5) requires a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer[43] or security-based swap dealer[44] services to

[41] Any person responsible for supervising the operation of the clearing agency's margin model would be viewed as performing the functions associated with the clearing agency's margin model and could not therefore have supervisory authority over the person conducting the model validation.

[42] Proposed Rule 17Ad–22(b)(4), however, would not prevent a person conducting the model validation from being employed by the clearing agency if the conditions in the proposed rule are satisfied. For example, a qualified member of the internal audit function that operates under a separate reporting line may be able to provide the model validation.

[43] The term "dealer" is defined in Section 3(a)(5) of the Exchange Act and means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise. The definition contains an exception for a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business. There is also an exception for banks engaging in certain specified activities. *See* 15 U.S.C. 78c(a)(5) for the complete definition.

[44] Pursuant to Section 761 of the Dodd-Frank Act, the term "security-based swap dealer" is added as Section 3(a)(71) of the Exchange Act, 15 U.S.C. 78c(a), and generally means any person who (A) holds itself out as a dealer in security-based swaps; (B) makes a market in security-based swaps; (C) regularly enters into security-based swaps with counterparties as an ordinary course of business for

obtain membership on fair and reasonable terms at the clearing agency in order to clear securities for itself or on behalf of other persons. Dealer and security-based swap dealer services generally involve services designed to facilitate securities transactions by buying and selling securities for a person's own account. The Commission preliminarily believes that requiring clearing agencies that perform CCP services to allow persons who are not dealers or security-based swap dealers to become members of the clearing agency will promote more competition in and access to clearing through facilitating indirect clearing arrangements, commonly referred to as correspondent clearing. Correspondent clearing is an arrangement between a current participant of a clearing agency and a non-participant that desires to use the clearing agency for clearance and settlement services.

The Commission has previously noted that in situations where direct access to clearing agencies is limited by reasonable participation standards firms that do not meet these standards may still be able to access clearing agencies through correspondent clearing arrangements with direct participants.[45] Such a process would involve the non-participant entering into a correspondent clearing arrangement with a participant so that the transaction may be submitted by the participant to the clearing agency. Thus, the success of correspondent clearing arrangements depends on the willingness of participants to enter into such arrangements with non-participant firms which may act as direct competitors to the participants in the participants' capacity as dealers or security-based swap dealers in the market for buying or selling the relevant securities. Given that participants that are dealers or security-based swap dealers may have an incentive to restrict clearing access to potential competitors, correspondent clearing arrangements may not be readily established without providing participants that do not provide dealer or security-based swap dealer services with the ability to become members of a clearing agency and thereby help develop correspondent clearing arrangements.

At the same time, the Commission recognizes that persons who are not dealers or security-based swap dealers may fail to meet other standards for membership at a clearing agency, such as the operational capabilities required for direct participation. Proposed Rule 17Ad–22(b)(5) would not prohibit clearing agencies that provide CCP services from taking these factors into account when establishing membership criteria for non-dealers. Rather, the proposal would prohibit clearing agencies that provide CCP services from denying membership on fair and reasonable terms to otherwise qualified persons solely by virtue of the fact that they do not perform any dealer or security-based swap dealer services.

The Commission preliminarily believes that the incentives of persons who do not provide dealer or security-based swap dealer services to promote access at the clearing agency that provides CCP services would not be limited by a desire to restrict competition in the market for buying or selling the relevant securities. Accordingly, the Commission preliminarily believes that permitting such persons to become members of a clearing agency that provides CCP services may foster the development of correspondent clearing arrangements that would allow dealers and security-based swap dealers, who may otherwise not be able to meet reasonable participation standards of a clearing agency, to obtain access to the clearing agency through correspondent clearing arrangements. The Commission preliminarily believes this would be beneficial because it could result in greater competition in and access to clearing.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(5). In addition, the Commission requests comments on the following specific issues:

- In addition to prohibiting denial of membership based on whether a person provides dealer or security-based swap dealer services as a way to facilitate greater indirect access to clearing, should the Commission consider other measures to promote access to clearing at clearing agencies that provide CCP services, including any requirements designed to promote greater direct access to clearing (*e.g.,* adding specific membership categories)?
- Should clearing agencies that provide CCP services be required to have policies and procedures that are designed to promote membership by non-dealers? If so, what would be the advantages and disadvantages of requiring the clearing agency to periodically measure its performance against the objectives contained in such policies and procedures, and who within the clearing agency should be responsible for conducting such a review (for instance the chief compliance officer)?
- Is the Commission's proposed rule requiring clearing agencies that provide CCP services to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons sufficiently clear? If not, why not?
- Should the Commission consider more prescriptive regulations to specify the criteria that clearing agencies should use to grant membership privileges to persons that do not perform any dealer or security-based swap dealer services to clear securities for themselves or on behalf of other persons? Please explain why or why not.
- What are the potential advantages and disadvantages of having persons that do not provide dealer or security-based swap dealer services as members of a clearing agency?
- If a clearing agency that provides CCP services does not have rules that facilitate correspondent clearing, should the Commission consider requiring that clearing agency to justify to the Commission why its rules do not facilitate correspondent clearing? What would be the advantages and disadvantages of such a requirement? What are the potential reasons why a clearing agency may not have rules that facilitate correspondent clearing arrangements?
- Should the Commission consider limiting the proposed requirement for providing membership access to persons who do not provide dealer or security-based swap dealer services to a certain category of clearing agencies, such as security-based swap clearing agencies that provide CCP services or those designated as systemically important? Please explain why or why not. In particular, are there special considerations, such as market concentration, affecting security-based swap clearing agencies that provide CCP services that make access to those clearing agencies for non-dealers particularly important? If not, why not? If so, what are those considerations and how would this requirement address

its own account; or (D) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. *See* Public Law 111–203, Section 761 for the complete definition. *See also* Exchange Act Release No. 63452 (December 7, 2010), 75 FR 80174 (December 21, 2010), *supra* note 4.

[45] *See* Exchange Act Release No. 63107 (October 14, 2010), 75 FR 65882 (October 26, 2010) (Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC).

them? Do any similar considerations exist, or is there a potential that similar considerations could exist in the future, with respect to clearing agencies that clear securities other than security-based swaps? Would there be any advantages or disadvantages to maintaining one standard for all clearing agencies that provide CCP services? Please explain.

Proposed Rule 17Ad–22(b)(6): Portfolio Size and Transaction Volume Thresholds Restrictions

Proposed Rule 17Ad–22(b)(6) prohibits a clearing agency that provides CCP services from having membership standards that require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume. The Commission notes that the proposed rule would not prohibit a clearing agency that provides CCP services from considering portfolio size and transaction volume as one of several factors when reviewing a potential participant's operations. Rather, the proposed rule would prohibit the establishment of minimum portfolio sizes or transaction volumes that by themselves would act as barriers to participation by new participants in clearing. Such minimum thresholds would not function as a good indicator of whether a participant is able to meet its obligations to a clearing agency.[46] This is because new participants to a clearing agency that provides CCP services that do not initially intend to transact in substantial size or volume may nevertheless have the operational and financial capacity to perform the activities that other participants are able to perform. Therefore, the Commission preliminarily believes that the proposed rule may help to facilitate the requirement in Section 17A of the Exchange Act that the rules of a clearing agency permit fair and open access.[47]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(6). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule prohibiting clearing agencies that provide CCP services from having membership standards that require participants to maintain a portfolio of any minimum size or to meet a minimum transaction volume threshold sufficiently clear? If not, why not?
- What are the potential advantages and disadvantages of prohibiting clearing agency membership standards from requiring participants to maintain a minimum portfolio size or meet a minimum transaction volume threshold? Please explain.
- Should the Commission consider imposing the proposed requirements on all clearing agencies, rather than only those that provide CCP services? Why or why not?
- Should the Commission consider prohibiting only security-based swap clearing agencies that provide CCP services from having membership standards that require participants to maintain a minimum portfolio size or to maintain a minimum transaction volume? Please explain why or why not. In particular, are there special considerations affecting security-based swap clearing agencies that provide CCP services that make it particularly important to prevent use of these specific criteria in their membership standards? If so, what are those special considerations and how would this requirement address them? If not, in what ways would such a requirement impact the operations of security-based swap clearing agencies that provide CCP services and other types of clearing agencies? Would there be advantages to maintaining one standard for all clearing agencies that provide CCP services? Why or why not?

Proposed Rule 17Ad–22(b)(7): Net Capital Restrictions

Proposed Rule 17Ad–22(b)(7) requires a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital[48] equal to or greater than $50 million with the opportunity to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency. This means that while a clearing agency that provides CCP services could not restrict access to the clearing agency solely because a participant does not have a net capital level above $50 million, the clearing agency's policies and procedures could be reasonably designed to limit the activities of the participant in comparison to the activities of other participants that maintained a higher net capital level. For example, as a way to help make its requirements scalable, a clearing agency may elect to place limits on its potential exposure to participants operating at certain net capital thresholds by restricting the maximum size of the portfolio such participants are permitted to maintain at the clearing agency. The Commission preliminarily believes that persons that maintain a net capital level of $50 million would have sufficient net capital to be able to participate at some level in a clearing agency that provides CCP services, provided that they are able to comply with other reasonable membership standards. Based on broker-dealer reporting data available to the Commission, the $50 million threshold for net capital is a standard that only approximately 4% of the total number of broker-dealers could satisfy. Accordingly, the Commission preliminarily believes that prohibitions on membership access that are based solely on persons having net capital equal to or greater than $50 million could introduce unnecessary barriers to clearing access. The Commission also preliminarily believes that the proposed rule would facilitate sound risk management practices by the clearing agencies by encouraging the clearing agencies to examine and articulate the benefits of higher net capital requirements as a result of having clearing agencies develop scalable membership standards that link the nature and degree of participation with the potential risks posed by the participant.[49]

Proposed Rule 17Ad–22(b)(7) also permits a clearing agency to provide for a higher net capital requirement (*i.e.,* higher than $50 million) as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures, such as scalable limitations on the transactions that the participants may clear through the clearing agency, and the Commission approves the higher net capital requirement as part of a rule filing or

[46] Proposed Rule 17Ad–22(b)(6) would not prohibit a clearing agency from imposing maximums portfolio sizes or transaction volume amounts.

[47] *See infra* note 59.

[48] Proposed Rule 17Ad–22(a)(5) would define "net capital", for the limited purposes of proposed Rule 17Ad–22(b)(7), to have the same meaning as set forth in Rule 15c3–1 under the Exchange Act for broker-dealers or any similar risk adjusted capital calculation for all of other prospective clearing members.

[49] The Commission notes there are examples of capital-related requirements that differentiate among types of participants. For instance, the Fixed Income Clearing Corporation has maintained a $50 million net worth requirement and $10 million excess net capital requirement for its Category 1 Dealer Netting Members and a $25 million net worth requirement and $10 million excess net capital requirement for its Category 2 Dealer Netting Members.

clearing agency registration application. The Commission preliminarily believes that by providing a method for clearing agencies to impose higher net capital requirements in circumstances where such requirements are necessary to mitigate risks, the proposed rule would provide appropriate flexibility for risk management purposes.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(b)(7). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule limiting the ability of clearing agencies that provide CCP services to deny membership access to participants with $50 million or more in net capital sufficiently clear? If not, why not?
- What are advantages or disadvantages of requiring a clearing agency that provides CCP services to provide a person that maintains a net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency?
- Should the Commission consider a higher or lower threshold for net capital than the proposed $50 million amount? Please explain and describe the rationale for the desired threshold amount.
- Should the Commission consider providing for the adjustment of the $50 million net capital threshold to reflect inflation, deflation or other factors? If so, how should the Commission make such adjustment?
- Would access to clearing agencies that provide CCP services by dealers or security-based swap dealers that are not currently members of such clearing agencies be significantly improved as a result of the proposed requirement?
- Are there any difficulties that clearing agencies that provide CCP services may encounter in implementing a system that seeks to scale net capital to the risk that a participant brings to a clearing agency? Would clearing agencies be able to effectively model such risks to prevent the potential of significant losses above the amounts of margin collected? How would clearing agencies seek to limit the activities of participants to prevent the risk of significant losses above the amounts of margin collected?
- Does the proposal, to permit a clearing agency to provide for a higher net capital requirement (*i.e.,* higher than $50 million) as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures, provide sufficient flexibility to be able to address potential risk management concerns? Would the proposal lead to higher or lower levels of risk at clearing agencies? Please explain.
- Should the Commission consider requiring only security-based swap clearing agencies that provide CCP services to be subject to this requirement? Please explain why or why not. In particular, are there special considerations affecting security-based swap clearing agencies that provide CCP services, such as market concentration, that make it particularly important for a person that maintains net capital equal to or greater than $50 million to have the ability to obtain membership? If so, what are those special considerations and how would this requirement address them? If not, in what ways would this requirement impact the operations of security-based swap clearing agencies that provide CCP services and other clearing agencies? Would there be any advantages or disadvantages to maintaining one requirement for all clearing agencies that provide CCP services? Please explain.

3. Proposed Rule 17Ad–22(c)

Proposed Rule 17Ad–22(c)(1) would provide that each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a clearing agency that performs central counterparty services shall calculate and maintain a record [50] of the financial resources necessary to meet its requirement in proposed Rule 17Ad–22(b)(3) and sufficient documentation to explain the methodology it uses to compute such financial resource requirement.

The Commission preliminarily believes that it would be appropriate to require clearing agencies that provide CCP services to make these calculations quarterly or at any time based on the request of the Commission because this proposed requirement would provide a periodic update of the financial resources that are needed as market conditions change, while also providing flexibility for the Commission to request such calculations on a real-time basis, which may be useful during periods of market stress or other circumstances where more timely information is desired. These calculations and related documentation should help the Commission in its oversight of clearing agencies' compliance with proposed Rule 17Ad–22(b)(3) by providing a clear record of the method used by the clearing agency providing CCP services to maintain sufficient financial resources.

Proposed Rule 17Ad–22(c)(2) would require a clearing agency to post on its Web site an annual audited financial report. Each financial report would be required to (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years of the clearing agency and be prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country, the financial statements may be prepared according to U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS"); (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01); and (iii) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02). The Commission preliminarily believes that requiring the posting of the clearing agency's audited annual financial report would provide an additional layer of information about the activities and financial strength of the clearing agency that market participants may find useful in assessing their use of the clearing agency's services.[51]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(c). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding calculating and maintaining a record of the financial resources necessary pursuant to proposed Rule 17Ad–22(b)(3) sufficiently clear? If not,

[50] *See* Exchange Act Rule 17a–1 (17 CFR 240.17a–1). Clearing agencies may destroy or otherwise dispose of records at the end of five years consistent with Exchange Act Rule 17a–6 (17 CFR 240.17a–6).

[51] The requirements of proposed Rule 17Ad–22(c)(2) concerning the audited annual financial report would apply individually to each respective clearing agency.

why not and what would be a better alternative?

• How do current practices by clearing agencies providing CCP services compare to the practices that the Commission proposes requiring in this rule with respect to determining needed financial resources? What are the expected incremental costs to clearing agencies that provide CCP services in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

• Should the Commission require calculation of the financial resources related information more or less frequently than quarterly? Why or why not?

• Should the Commission require any other financial statements of a clearing agency to be posted on its Web site, such as quarterly financial statements?

• What are the advantages and disadvantages of permitting a financial report to be in compliance with IFRS as an alternative to U.S. GAAP? If the Commission adopts the proposal to permit certain clearing agencies to report using IFRS as published by the IASB, should the Commission require a reconciliation to U.S. GAAP for specified accounts? If so, what accounts or items would be most useful to participants and other regulators? Would permitting only clearing agencies that are incorporated or organized under the laws of any foreign country to report under IFRS create any incentives for changing jurisdictions of incorporation or organization? If it is permitted, should we exclude certain clearing agencies, such as those who fall within one or more of the following categories: (i) Those whose financial reports have not been audited by an independent public accountant inspected by the PCAOB, (ii) those who have not received a "clean" audit opinion, or (iii) those who have previously had to correct a material error in their financial statements?

4. Proposed Rule 17Ad–22(d)

Proposed Rule 17Ad–22(d) would set forth certain standards that relate to clearance and settlement processes. The areas addressed include: (1) Transparent and enforceable rules and procedures; (2) participation requirements; (3) custody of assets and investment risk; (4) operational risk; (5) money settlement risk; (6) cost-effectiveness; (7) links; (8) governance; (9) information on services; (10) immobilization and dematerialization of stock certificates; (11) default procedures; (12) timing of settlement finality; (13) delivery versus payment; (14) risk controls to address participants' failures to settle; and (15) physical delivery risks. The discussion below provides greater detail regarding each respective standard covered in proposed Rule 17Ad–22(d).

Proposed Rule 17Ad–22(d)(1): Transparent and Enforceable Rules and Procedures

Proposed Rule 17Ad–22(d)(1) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well founded, transparent and enforceable (legally and practically) structure for each aspect of their activities in all relevant jurisdictions.[52] The clearing agency should have written policies and procedures[53] in place that, at a minimum, address the significant aspects of a clearing agency's operations and risk management in order to provide a well founded legal framework and must be clear, internally consistent, and readily accessible by the public in order to provide a transparent legal framework. In addition, the clearing agency must be able to enforce its policies and procedures that contemplate enforcement by the clearing agency. Moreover, policies and procedures that govern or create remedial measures that a party other than the clearing agency (such as a clearing member) can undertake to seek redress or to promote compliance with applicable rules must be enforceable.[54] For the clearing agency's policies and procedures to be enforceable, a clearing agency must have appropriate means to compel parties to comply in a timely manner, including members or service providers of clearing agencies that are non-U.S. persons. The Commission preliminarily believes this proposed requirement would help to reduce the legal risks involved in the clearance and settlement process. Such legal risks include, among other things, the likelihood that the policies and procedures of a clearing agency are incomplete, opaque, or not enforceable and will therefore adversely affect the functioning of the clearing agency.[55] Because they would function to reduce these legal risks, the Commission preliminarily believes that well founded, transparent and enforceable policies and procedures established by the clearing agency to underpin the clearing agency's operational and business activities are essential to a clearing agency's ability to facilitate the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds as required for the protection of investors by Section 17A of the Exchange Act.[56]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(1). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding policies and procedures providing for a well founded, transparent, and enforceable legal framework sufficiently clear? If not, why not? Is there a better alternative?

• How would this proposal affect the current practices of clearing agencies in formulating policies and procedures? Would the proposed rule affect the costs of providing clearing agency services? Please explain.

• What are the advantages and disadvantages of taking into account that legal risks may vary by the types of services offered by clearing agencies and whether the clearing agency operates in multiple jurisdictions? Are there any considerations, such as issues concerning compliance with regulations under various jurisdictions, that the Commission should take into account for clearing agencies operating in multiple jurisdictions?

• Should the Commission consider more prescriptive rules to define how clearing agencies would provide for a well founded, transparent and enforceable legal framework? Please explain why or why not. Alternatively, should the Commission consider more prescriptive rules that would apply in the context of approval of a clearing agency's application for registration?

• Should the Commission require a clearing agency to submit legal opinions or other supporting evidence to demonstrate the legal adequacy of the mechanisms at the clearing agency that

[52] A relevant jurisdiction would include, among others, activities (i) in the United States, (ii) involving any means of interstate commerce, or (iii) in respect to providing clearing services to any U.S. person. For clearing agencies that operate in multiple jurisdictions, this also could include resolving possible conflicts of laws issues that the clearing agency may encounter.

[53] Clearing agencies are SROs as defined in Section 3(a)(26) of the Exchange Act. A stated policy, practice, or interpretation of an SRO, such as a clearing agency's written policies and procedures, would generally be deemed to be a proposed rule change. *See* 17 CFR 240.19b–4.

[54] The Commission preliminarily believes that proposed Rule 17Ad–22(d)(1) would augment the Exchange Act requirement that the rules of the clearing agency must provide that its participants shall be appropriately disciplined for any violation of any provision of the rules of the clearing agency. *See* 15 U.S.C. 78q–1(b)(3)(G).

[55] *See generally*, RSSS Recommendation 1, Legal Framework and RCCP Recommendation 1, Legal Risk.

[56] 15 U.S.C. 78q–1(a)(1)(A).

are in place to handle participant defaults?

Proposed Rule 17Ad–22(d)(2): Participation Requirements

Proposed Rule 17Ad–22(d)(2) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. This proposed requirement is intended to reduce the likelihood of defaults by participants, while also providing flexibility to tailor standards that are linked to the obligations of the participant. As a result, the Commission preliminarily believes this requirement would protect investors and facilitate prompt and accurate clearance and settlement by promoting membership standards at clearing agencies that are likely to limit the potential for defaults.

The proposed rule also would require clearing agencies to have procedures in place to monitor that participation requirements are met on an ongoing basis. Operational and financial stability of participants is subject to market forces and can therefore change over time. Because participants collectively contribute to the operational and financial stability of a clearing agency, the Commission preliminarily believes that the proposed requirement to continue to monitor compliance with the clearing agency's participation requirements supports the Exchange Act requirement that clearing agencies are able to facilitate prompt and accurate clearance and settlement.[57]

In addition, clearing agencies would be required to have participation requirements that are objective,[58] publicly disclosed, and facilitate fair and open access.[59] The Commission preliminarily believes this requirement would foster compliance with the requirement under Section 17A of the Exchange Act that the rules of a clearing agency must not be designed to permit unfair discrimination in the admission of participants by requiring standards that are designed to be measurable, open and fair.[60]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(2). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding participation requirements sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices of registered clearing agencies with respect to participation standards compare to the proposed requirements in this rule? Are there any expected costs or benefits to clearing agencies in connection with adding to or revising their participation standards in order to implement this portion of the Commission's proposed rule?
- Should the Commission's proposed rule regarding participation requirements be more specific? If so, why and in what way? Should the Commission's proposed rule regarding participation requirements be less specific to allow for greater flexibility? If so, why and in what way?
- Should more specific monitoring obligations be imposed to ensure compliance with participation standards? For example, should the Commission consider mandating an independent review of the process for monitoring participants' compliance with the clearing agency's participation requirements? Why or why not?

Proposed Rule 17Ad–22(d)(3): Custody of Assets and Investment Risk

Proposed Rule 17Ad–22(d)(3) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner whereby risk of loss or of delay in access to them is minimized. Minimizing the risk of loss or delay in access is intended to refer to holding assets in ways that, to the extent reasonably practicable, would limit the potential for loss of those assets and delay in access to them. For example, the Commission is aware that clearing agencies currently seek to minimize the risk of loss or delay in access by holding assets that are highly-liquid (*e.g.,* cash, U.S. Treasury securities or securities issued by a U.S. government agency) and engaging banks to custody the assets and facilitate settlement. Compliance with the proposed requirement is intended to improve the ability of the clearing agency to meet its settlement obligations by reducing the likelihood that assets securing participant obligations to the clearing agency would be unavailable or insufficient when the clearing agency needs to draw on them. The proposed rule would also require clearing agencies to invest assets in instruments with minimal credit, market, and liquidity risks. A requirement that a clearing agency hold assets in instruments with minimal credit, market and liquidity risk may promote the clearing agency's ability to retrieve these assets promptly. That, in turn, could help to increase the potential for a clearing agency to timely meet its settlement obligations to its participants.

The Commission preliminarily believes that proposed Rule 17Ad–22(d)(3) would strengthen the requirement in Section 17A(b)(3)(F) of the Exchange Act that the rules of a clearing agency must be designed to ensure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible.[61] In this way, the Commission preliminarily believes the proposed rule would also promote protection of the financial market served by the clearing agency.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(3). In addition, the Commission requests comments on the following specific issues:

- Are the proposed rule's requirements regarding custody and investment of assets sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices of clearing agencies for holding or investing in assets compare to the Commission's proposal? What are the expected incremental costs to clearing agencies in connection with adding to or revising these current practices in order to comply with the Commission's proposed rule?
- Are there any other factors not mentioned that the Commission should take into consideration with respect to

[57] 15 U.S.C 78q–1(b)(3)(A).

[58] Objective criteria would generally include, but not be limited to, criteria that are based on measureable facts such as capital requirements.

[59] Having open access, in part, involves having a process for admission of participants that does not unfairly discriminate. *See* 15 U.S.C. 78q–1(b)(3)(F) ("The rules of a clearing agency * * * are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency"). In addition, the Dodd-Frank Act added Section 3C to the Exchange Act which provides in relevant part: "(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall— (A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and (B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility." Public Law 111–203 § 763(a) (adding Section 3C to the Exchange Act).

[60] 15 U.S.C. 78q–1(b)(3)(F).

[61] 15 U.S.C. 78q–1(b)(3)(F).

minimizing custody of assets and investment risk?

• Should clearing agencies ever be permitted to hold assets in instruments that do not have minimal credit, market and liquidity risk? If so, why and under what circumstances?

• What measures should clearing agencies have in place to minimize risk of loss or delay in access to assets? Should the proposed rule specify any such measures?

Proposed Rule 17Ad–22(d)(4): Identification and Mitigation of Operational Risk

Proposed Rule 17Ad–22(d)(4) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize these risks through the development of appropriate systems, controls, and procedures. A clearing agency that develops systems, controls and procedures which, taken as a whole, are designed to limit the identified sources of operational risk to the extent reasonably practicable would be able to satisfy this requirement. The proposed rule also would require clearing agencies to implement systems that are reliable, resilient and secure and have adequate scalable capacity. This should help to ensure that clearing agencies are able to operate with minimal disruptions, even during times of market stress when there may be greater demands on their systems due to higher volume. In addition, the proposed rule would require that clearing agencies have business continuity plans that allow for timely recovery of operations and ensure the fulfillment of a clearing agency's obligations. This requirement would be relevant in the event of, among other things, deficiencies in information systems or internal controls, human errors, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters.

The Commission preliminarily believes that the requirements under proposed Rule 17Ad–22(d)(4) should collectively help to address risks posed by potential operational deficiencies to the clearing agency and its participants. Specifically, to help limit disruptions that may impede the proper functioning of a clearing agency, the Commission preliminarily believes it is imperative that clearing agencies review their operations for potential weaknesses and develop appropriate systems, controls, and procedures to address weaknesses contemplated under the proposed rule. Moreover, the Commission preliminarily believes that maintaining reliable, resilient and secure systems with adequate backup capability, as well as continuity plans providing for timely recovery of operations, are essential components of facilitating prompt and accurate clearance and settlement. The Commission intends for proposed Rule 17Ad–22(d)(4) to complement the existing guidance provided by the Commission in its Automation Review Policy statements[62] and Interagency White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.[63]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(4). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding identification and mitigation of operational risk sufficiently clear? If not, why not and what would be a better alternative?

• How do current practices of clearing agencies with respect to operational risks compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices relating to operational risks in order to implement the Commission's proposed rule?

• Should the Commission's proposal require a specific methodology to identify and mitigate operational risk? If so, what is the methodology and why should this methodology be required?

• Should the Commission require that business continuity plans be tested with participants on an ongoing basis or with a specified frequency? Should any other more prescriptive requirements be considered by the Commission?

• Would a clearing agency's ability to comply with the proposed rule be affected if the clearing agency's operations were outsourced to another firm? If so, how should the proposed rule address these differences in compliance? Would the need to minimize operational risk require limits on the types of operations that can be outsourced by clearing agencies? Would the answer depend on whether the function was outsourced to an affiliated or unaffiliated firm? Please explain.

Proposed Rule 17Ad–22(d)(5): Money Settlement Risks

Proposed Rule 17Ad–22(d)(5) would require clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants, and require funds transfers to the clearing agency to be final when effected. The Commission notes that there are a number of arrangements that clearing agencies could establish to comply with the proposed rule. For example, a clearing agency could establish criteria for use of banks to effect money settlements with its participants that address the banks' creditworthiness, access to liquidity, and operational reliability. Where practicable, a clearing agency could use multiple settlement banks and monitor the concentration of payments among its settlement banks. A clearing agency also could employ agreements with such banks to ensure that funds transfers to the clearing agency are final when effected. In addition, where available, a clearing agency could use a central bank to effect money settlements with its participants. Use of the Federal Reserve System in the United States or other central bank would eliminate the risks associated with using a settlement bank.[64]

These proposed requirements are meant to reduce the risk that financial obligations related to the activities of a clearing agency are not timely settled or discharged with finality. Failure by a bank to effectuate timely and final settlement adversely affects the clearing

[62] *See* Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48704 ("ARP I") and 29815 (May 9, 1991), 56 FR 22489 ("ARP II"). Generally, the guidance in ARP I and ARP II provides for the following activities by clearing agencies: (1) Performing periodic risk assessments of its automated data processing ("ADP") systems and facilities; (2) providing for the selection of the clearing agency's independent auditors by non-management directors and authorizing such non-management directors to review the nature, scope, and results of all audit work performed; (3) having an adequately staffed and competent internal audit department; (4) furnishing annually to participants audited financial statements and an opinion from an independent public accountant as to the clearing agency's system of internal control—including unaudited quarterly financial statements also should be provided to participants upon request; and (5) developing and maintaining plans to assure the safeguarding of securities and funds, the integrity of the ADP system, and recovery of securities, funds, or data under a variety of loss or destruction scenarios.

[63] *See* Exchange Act Release No. 47638 (April 7, 2003), 68 FR 17809 (April 11, 2003), *available at http://www.sec.gov/news/studies/34-47638.htm.*

[64] The Board of Governors of the Federal Reserve System will determine whether systemically important clearing agencies may obtain account access from the Federal Reserve System.

agency by exposing it to credit and liquidity pressures that can destabilize the clearing agency's ability to facilitate prompt and accurate clearance and settlement. Accordingly, the Commission is proposing this new rule, which is designed to limit the potential that the money settlement arrangements cause the clearing agency to face higher levels of credit and liquidity risks and to provide assurance that funds transfers are final when effected. In addition, the Commission preliminarily believes that the proposed rule would assist a clearing agency in meeting the requirement of Section 17A(b)(3)(F) of the Exchange Act, which requires the rules of a clearing agency to be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[65]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(5). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding money settlement risk sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices regarding money settlement risk of clearing agencies compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices regarding money settlement risk in order to implement the Commission's proposed rule?
- Would it be reasonable to eliminate the clearing agency's credit and liquidity risks from the use of banks to effect money settlements with its participants? If so, how?
- Are there other rules that the Commission should establish regarding money settlement risk management, for example, by mandating the minimum number of banks that a clearing agency may use to effect money settlements with its participants in order to avoid reliance on a small number of such banks, or by specifying characteristics of financial institutions that may be used by clearing agencies for settlement purposes? If so, what would be the appropriate rules and what would be the effect of adopting them?
- Should rules for money settlement risk management established by the Commission be uniform, or are there circumstances in which it would be appropriate for clearing agencies to accept a higher level of money settlement risk, such as when transacting in certain product categories or with certain types of customers? Could the rules proposed by the Commission limit the ability of clearing agencies to compete for certain types of business either within the United States or internationally? Why or why not?
- Should the Commission adopt rules to govern the clearing agency's use of banks that are affiliated with participants in the clearing agency? Should the Commission prohibit this practice? Please explain.

Proposed Rule 17Ad–22(d)(6): Cost-Effectiveness

Proposed Rule 17Ad–22(d)(6) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide that their operations are cost-effective in meeting the requirements of participants while maintaining the safety and security of operations. To maintain safe and secure operations, a clearing agency would need to comply with the requirements under the Exchange Act and the rules thereunder. For example, a clearing agency would need to maintain the ability to comply with any recordkeeping or other regulatory requirement. Having clearing agencies be mindful of the costs that are incurred by their participants, while maintaining such compliance, should help to reduce inefficiencies in the provision of clearing agency services. This is particularly important in circumstances where clearing agencies may not be subject to strong competitive forces (such as when there is only one clearing agency for an asset class) for the provision of their services and therefore may have less of an incentive to be cost-effective in meeting the requirements of participants. Accordingly, the Commission preliminarily believes the proposed rule is appropriate in the public interest, for the protection of investors, because it would potentially help reduce the costs incurred for clearing agency services while also maintaining appropriate standards for a clearing agency's operations.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(6). In addition, the Commission requests comments on the following specific issues:

- Would the proposed rule help to assure that a clearing agency's operations are cost-effective? Does the proposed rule establish a standard for maintaining cost-effectiveness that is sufficiently clear? If not, why not and how might the rule be altered?
- Are there any other requirements that the Commission should include in the rule to help ensure that clearing agencies are cost-effective in providing clearing and settlement services while also maintaining safe and secure operations and compliance with all regulatory requirements?
- Does any specific business model for clearing agencies help to promote cost-effectiveness? Should the business model of a clearing agency affect the type of rule regarding cost-effectiveness that should apply to the clearing agency?
- Should the Commission consider issuing additional guidance on how clearing agencies could be cost-effective in meeting the requirements of participants while maintaining safe and secure operations? If so, what type of guidance would be helpful?

Proposed Rule 17Ad–22(d)(7): Links

Proposed Rule 17Ad–22(d)(7) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear trades, and to ensure that these risks are managed prudently on an ongoing basis.

Section 17A(a)(1)(D) of the Exchange Act states that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.[66] Further, Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[67] In the clearance and settlement process, links should help deepen market liquidity and enable participants to trade in other markets.[68] However, by tying the

[65] 15 U.S.C. 78q–1(b)(3)(F).

[66] 15 U.S.C. 78q–1(a)(1)(D).

[67] 15 U.S.C. 78q–1(b)(3)(F).

[68] For example, The Depository Trust Company's ("DTC") Canadian Link Service allows qualifying DTC participants to clear and settle valued securities transactions with participants of a Canadian securities depository. The link is designed to facilitate cross-border transactions by allowing participants to use a single depository interface for U.S. and Canadian dollar transactions and eliminate the need for split inventories. *See* Exchange Act Release Nos. 52784 (November 16,

Continued

clearing operations of different clearing agencies together, link arrangements potentially expose a clearing agency and its members to the risk management profile of another clearing organization and to the risk of financial loss if that clearing organization experiences a default or is otherwise unable to meet its settlement obligations.[69]

Although the design and operation of each link will present a unique risk profile, clearing agencies potentially face legal, operational, credit and liquidity risks from link arrangements. In addition, because links can create interdependencies, clearing agencies may be affected by systemic risk if there are deficiencies in these arrangements. The Commission preliminarily believes that requiring clearing agencies to evaluate and monitor any link arrangements they maintain is essential to protect the marketplaces that clearing agencies serve because the requirement would reduce the likelihood that such arrangements perpetuate risks that could create disruptions in the operations of clearing agencies. Accordingly, the Commission is proposing this rule, which would require clearing agencies to evaluate and manage the risks associated with its links.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(7). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding evaluating link arrangements and prudently managing the associated risks on an ongoing basis sufficiently clear? If not, why not and how might the rule be stated more clearly?
- How do current practices of clearing agencies with respect to link arrangements meet or fail to meet the standard that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices for link arrangements to comply with the Commission's proposed rule?
- Should the Commission include specific requirements regarding the clearing agency's responsibility to evaluate a link for, among other things, the other clearing organization's structure, financial strength, regulatory and disciplinary history, disaster recovery, banking relationships and lines of credit, and risk management controls?
- Should the Commission establish additional requirements for clearing agencies that create linkages with other parties, such as information reporting requirements to the Commission? Would such additional requirements reduce or increase the likelihood that linkages would be established in appropriate circumstances?
- How could clearing agencies ensure that the laws and contractual rules governing linked systems support the design of the link and provide adequate protection to both clearing agencies and their participants? Are additional rules or requirements needed when a link is established with a non-U.S. clearing organization?
- Should the Commission place any limits on or promote the use of linked arrangements in light of potential effects on systemic risk?

Proposed Rule 17Ad–22(d)(8): Governance

Proposed Rule 17Ad–22(d)(8) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of Exchange Act applicable to clearing agencies,[70] to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[71]

Clear and transparent governance arrangements promote accountability and reliability in the decisions, rules and procedures of the clearing agency because they provide interested parties (such as owners, participants, and general members of the public) with information about how such decisions are made and what the rules and procedures are designed to accomplish.[72] The key components of a clearing agency's governance arrangements include the clearing agency's ownership structure, the composition and role of its board, the structure and role of board committees, reporting lines between management and the board, and the processes that ensure management is held accountable for the clearing agency's performance.

Governance arrangements have the potential to play an important role in making sure that clearing agencies fulfill the Exchange Act requirements that the rules of a clearing agency be designed to protect investors and the public interest and to support the objectives of owners and participants. Similarly, governance arrangements may promote the effectiveness of a clearing agency's risk management procedures by creating an oversight framework that fosters a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement.[73]

The Commission preliminarily believes that the requirements regarding governance arrangements contained in proposed Rule 17Ad–22(d)(8) would be appropriate in the public interest and for the protection of investors because they would enhance the ability of a clearing agency to serve the interests of its various constituents and the interests of the general public while maintaining prudent risk management processes to promote prompt and accurate clearance and settlement.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(8). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding clear and transparent governance arrangements sufficiently clear? If not, why not and how might the rule be stated more clearly?
- Would the proposed rule require clearing agencies to change their current

2005), 71 FR 70902 (November 23, 2005) and 55239 (February 5, 2007), 72 FR 6797 (February 13, 2007) (File No. SR–DTC 2006–15).

[69] A clearing agency may be required to enter into a participant agreement with the other clearing organization as part of the link arrangement, which includes sharing in the loss allocations of that clearing organization. *See* RCCP 4.10.6, *supra* note 29.

[70] Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to protect investors and the public interest. 15 U.S.C. 78q–1(b)(3)(F).

[71] Proposed Rule 17Ad–22(d)(8) would complement other applicable requirements concerning governance at clearing agencies that may also separately apply. These other requirements include the existing regulatory framework of Section 17A of the Exchange Act and the related requirements contemplated by proposed Rule 17Ad–25, as well as Section 765 of the Dodd-Frank Act with respect to security-based swap clearing agencies. *See supra* Section III.F. (proposing that clearing agencies be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest). *See also* Exchange Act Release No. 63107, 75 FR 65882, *supra* note 45.

[72] The Exchange Act currently requires that certain aspects of a clearing agency's governance arrangements be made clear and transparent. Section 19(b) of the Exchange Act requires that clearing agencies, as SROs, file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of the clearing agency, accompanied by a concise general statement of the basis and purpose of the proposed rule change. 15 U.S.C. 78s(b).

[73] The role of governance arrangements in promoting effective risk management has also been a focus of rules recently proposed by the Commission to mitigate conflicts of interest at security-based swap clearing agencies. *See* Exchange Act Release No. 63107, 75 FR 65882, *supra* note 45.

practices with respect to governance arrangements? If so, how? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices with respect to governance arrangements in order to implement the Commission's proposed rule?

• Are there any other requirements that should be included in the rule to promote clear and transparent governance arrangements, such as mandating specific board or ownership structures? If so, what should they be?

• Should the Commission propose more prescriptive requirements for the governance of all clearing agencies? If so, what should they be? For example, should the Commission specify certain reporting lines or board composition?

• How direct should the Commission's role be in the oversight and monitoring of the composition and activities of clearing agency boards and board committees? If the Commission's role should be more direct, what mechanisms or structure would facilitate the Commission taking such a role? For example, should the Commission consider any additional requirements related to fiduciary duties to either enhance mitigation of conflicts or address deficiencies?

Proposed Rule 17Ad–22(d)(9): Information on Services

Proposed Rule 17Ad–22(d)(9) would require clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using clearing agencies' services. The types of information that a clearing agency may disclose, as appropriate, to its participants to satisfy this requirement include the clearing agency rulebook,[74] the costs of its services, a description of netting and settlement activities the clearing agency provides, procedures relating to participants' rights and obligations, information regarding the clearing agency's margin methodology, and information regarding the "extreme but plausible" scenarios that the clearing agency uses to stress test its financial resources. Requiring a clearing agency to disclose information sufficient for participants to identify risks and costs associated with using the clearing agency will allow participants to make informed decisions about the use of the clearing agency and take appropriate actions to mitigate their risks and costs associated with the use of the clearing agency. Accordingly, the Commission's proposed rule is designed to promote participants' understanding of the risks and costs associated with using a clearing agency's services, thereby facilitating prompt and accurate clearance and settlement, safeguarding securities and funds and protecting investors.[75]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(9). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding providing market participants with sufficient information to identify and evaluate the risks and costs associated with using the clearing agency's services sufficiently clear? If not, why not and what would be a better alternative?

• How do current practices of clearing agencies with respect to providing market participants with information meet or fail to meet the requirements in the proposed rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the proposed requirements?

• Should the Commission consider more detailed requirements concerning disclosure of certain matters such as pricing information and the cost of specific services, as well as default and risk management procedures? Why or why not?

• Should any of the examples of the types of information that a clearing agency may disclose be specifically required to be provided by clearing agencies to their participants or to the public?

Proposed Rule 17Ad–22(d)(10): Immobilization and Dematerialization of Stock Certificates

Proposed Rule 17Ad–22(d)(10) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to immobilize[76] and dematerialize[77] securities certificates and transfer them by book entry to the greatest extent possible when the clearing agency provides central securities depository services.[78] The Commission preliminarily believes that the immobilization and dematerialization of securities and their transfer by book entry would result in reduced costs and risks associated with securities settlements and custody by removing the need to hold and transfer many, if not most, physical certificates.[79] The Commission also preliminarily believes that the proposed rule would strengthen the requirement in Section 17A(b)(3)(F) of the Exchange Act that requires the rules of a clearing agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible.[80]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(10). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding immobilization and dematerialization of securities certificates and transferring them by book entry to the greatest extent possible sufficiently clear? If not, why not and what would be a better alternative?

• How do current practices of clearing agencies regarding immobilization and dematerialization of securities certificates compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

• What advantages or disadvantages might certificates have over securities

[74] Because clearing agencies are SROs, their rules are published by the Commission and are generally available on each clearing agency's Web site. Nevertheless, discrete rule proposals may not necessarily provide a complete picture of a clearing agency's operations and risk mitigation procedures.

[75] *See* 15 U.S.C. 78q–1(b)(3)(F).

[76] Immobilization refers to any circumstance where an investor does not receive a physical certificate upon the purchase of shares or is required to physically deliver a certificate upon the sale of shares.

[77] Dematerialization is the process of eliminating physical certificates as a record of security ownership.

[78] *See* proposed Rule 17Ad–22(a)(2) for definition of "central securities depository services." In the U.S., DTC is currently the only registered clearing agency that provides central securities depository services.

[79] By concentrating the location of physical securities in a single central securities depository, clearing agencies are able to centralize the operations associated with custody and transfer and reduce costs through economies of scale. Virtually all mutual fund securities, government securities, options, and municipal bonds in the U.S. are dematerialized and most of the equity and corporate bonds in the U.S. market are either immobilized or dematerialized. While the U.S. markets have made great strides in achieving immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form impose unnecessary risk and expense to the industry and to investors. *See* Exchange Act Release No. 8398 (March 11, 2004), 69 FR 12921 (March 18, 2004).

[80] 15 U.S.C. 78q–1(b)(3)(F).

held in book-entry-only form (*e.g.,* proof of ownership in the event of a loss of electronic records of ownership)? Under what circumstances, if any, should the Commission encourage or discourage the use of physical certifications?

Proposed Rule 17Ad–22(d)(11): Default Procedures

Proposed Rule 17Ad–22(d)(11) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of their default procedures publicly available. The Commission preliminarily believes that this would provide certainty and predictability to market participants about the measures a clearing agency will take in the event of a participant default. Key aspects of a clearing agency's default procedures should generally include the following: (i) The circumstances in which action may be taken (*e.g.,* what events trigger mutualization of losses); (ii) who may take those actions (*e.g.,* division of responsibilities when clearing agencies operate links to other clearing agencies); (iii) the scope of the actions that may be taken (*e.g.,* any limits on the total losses that would be mutualized); (iv) the mechanisms to address a clearing agency's obligations to non-defaulting participants (*e.g.,* process for clearing trades guaranteed by the clearing agency to which a defaulting participant is a party); and (v) the mechanisms to address the defaulting participant's obligations to its customers (*e.g.,* process for dealing with defaulting participants' customer accounts). The proposed rule also would require that clearing agencies establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures [81] and to continue meeting its obligations when due in the event of a participant default. Default procedures, among other things, are meant to reduce the likelihood that a default by a participant, or multiple participants, will disrupt the clearing agency's operations. By creating a framework of default procedures that are designed to permit a clearing agency to take actions to contain losses and liquidity pressures it faces while continuing to meet its obligations, the clearing agency should be in a better position to continue providing its services in a manner that promotes accurate clearance and settlement during times of market stress.

The Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(d)(11) would increase the possibility that defaults by participants, should they occur, would proceed in an orderly and transparent manner. This is because the Commission preliminarily believes that the proposed rule would help to ensure that all participants are aware of the default process and are able to plan accordingly and that clearing agencies would have sufficient time to take corrective actions to mitigate potential losses.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(11). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule requiring a clearing agency to establish default procedures and make key aspects of those default procedures publicly available sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices of clearing agencies with respect to default procedures compare to the requirements of the proposed rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?
- Should the Commission require specific default procedures for all clearing agencies, or should clearing agencies have discretion to create their own default procedures consistent with the proposed rule? Should the default procedures include a resolution plan if the clearing agency is unable to obtain sufficient financial resources?
- How much flexibility should a clearing agency have in the time it takes to manage a default and perform any liquidation of positions?

Proposed Rule 17Ad–22(d)(12): Timing of Settlement Finality

Proposed Rule 17Ad–22(d)(12) would require clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and that intraday or real-time finality is provided where necessary to reduce risks. A clearing agency would be able to comply with this requirement by having a reasonable process for facilitating final settlement to occur no later than the end of the settlement day and for providing intraday or real-time finality where necessary to reduce risks. Intraday or real-time finality may be necessary to reduce risk in circumstances where the lack of intraday or real-time finality may impede the clearing agency's ability to facilitate prompt and accurate clearance and settlement, cause the clearing agency's participants to fail to meet their obligations, or cause significant disruptions in the securities markets.

The Commission preliminarily believes that requiring intraday or real-time finality for settlements, where such requirement is necessary to reduce risks, would facilitate prompt and accurate clearance and settlement by providing certainty that a settlement is final and irrevocable within a timeframe that is commensurate with the level of risk created by the lack of settlement finality. The risks associated with lack of settlement finality stem from the undermining of confidence that transaction obligations will be discharged by the clearing agency or its participants. Moreover, the Commission preliminarily believes that settlement finality should occur not later than the end of the settlement day to limit the volume of outstanding obligations that are subject to settlement at any one time and thereby reduce the settlement risk exposure of participants and the clearing agency.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(12). In addition, the Commission requests comments on the following specific issues:

- Is the Commission's proposed rule regarding the timing of settlement finality sufficiently clear? If not, why not and what would be a better alternative?
- How do current practices of clearing agencies with respect to settlement finality compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?
- What changes, if any, would be created by the requirement under the proposed rule that final settlement occur no later than the end of the settlement day? Does the proposed rule affect certain identifiable categories of market participants differently than others, such as smaller entities or entities with limited operations in the U.S.? If so, how?

[81] A clearing agency may be able to contain liquidity pressures it faces by taking actions to secure additional sources of liquidity or limiting transactions that potentially serve to drain liquidity resources.

• Are there operational, legal or regulatory impediments to intraday or real-time settlement? Will the proposed standard make it harder for clearing agencies to conduct certain types of business for which intraday or real-time finality may be difficult? Are any additional rules or regulations needed to encourage intraday or real-time finality to reduce risks?

• Are there circumstances when the requirements of intraday, real-time or end of day settlement finality proposed by the rule are not feasible or are not beneficial? If so, in what circumstances?

Proposed Rule 17Ad–22(d)(13): Delivery Versus Payment

Proposed Rule 17Ad–22(d)(13) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers to achieve delivery versus payment ("DVP"). DVP is achieved in the settlement process when the mechanisms facilitating settlement ensure that delivery occurs if and only if payment occurs.[82]

Among other things, DVP eliminates the risk that a party would lose some or its entire principal because payment is made only if securities are delivered. The Commission preliminarily believes that clearing agencies should be required to use this payment method in order to reduce the potential that delivery of the security is not appropriately matched with payment for a security, thereby impeding the clearing agency's ability to facilitate prompt and accurate clearance and settlement. Therefore, the Commission is proposing that clearing agencies be required to link securities transfers to funds transfers in a way that achieves DVP.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(13). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding using DVP to eliminate principal risk by linking securities transfers to funds transfers sufficiently clear? If not, why not and what would be a better alternative?

• How do current practices of clearing agencies for linking securities transfers to funds transfers compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

• What are the advantages and disadvantages of the proposed rule mandating a strict DVP standard? Does the proposed rule affect certain identifiable categories of clearing agencies differently than others, such as clearing agencies with more diversified post-trade services as compared to clearing agencies that specialize in fewer activities?

• Are there operational or legal impediments to implementing the proposed DVP rule? Would the proposed rule make it more difficult for clearing agencies to conduct certain types of business that may require a longer settlement cycle, for reasons outside of the clearing agency's control? Are any additional rules or regulations needed to support achievement of the proposed DVP rule?

• Are there circumstances when DVP is not feasible or practicable? If so, when?

Proposed Rule 17Ad–22(d)(14): Risk Controls To Address Participants' Failure To Settle

Proposed Rule 17Ad–22(d)(14) requires clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to institute risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant exposure fully, that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the clearing agency provides central securities depository services[83] and extends intraday credit to participants.

Clearing agencies that provide central securities depository services may sometimes extend intraday credit to participants to, among other things, facilitate timely settlements by providing participants with an additional tool to meet delivery obligations. If a participant fails to settle its obligations to the clearing agency, the clearing agency must cover those obligations to be able to continue to facilitate prompt and accurate clearance and settlement.

The Commission preliminarily believes it is important for clearing agencies that provide central securities depository services to institute risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant exposure fully, that ensure timely settlement in these circumstances to address the risk that the participant may fail to settle after credit has been extended. The Commission also preliminarily believes that requiring the controls to be designed to withstand the inability of the participant with the largest payment obligation to settle, in such circumstances, would reduce the likelihood of disruptions at the clearing agency by having controls in place to account for the largest possible loss from any individual participant and thereby help the clearing agency to provide prompt and accurate clearance and settlement during times of market stress.[84]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(14). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding risk controls to ensure timely settlement for a clearing agency providing central securities depository services sufficiently clear? If not, why not and what would be a better alternative?

• How do current practices of clearing agencies that provide central securities depository services compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

• In addition to collateral requirements and limits on credit exposure to participants, are there other controls on intra-day credit that could be effective in managing settlement risk? If so, should the Commission require the use of any of these other risk controls?

• What are the advantages and disadvantages of requiring that controls be designed to withstand a failure to

[82] *See* Bank for International Settlements, *Delivery Versus Payment in Securities Settlement Systems* (1992), *available at http://www.bis.org/publ/cpss06.pdf.* Three different DVP models can be differentiated according to whether the securities and/or funds transfers are settled on a gross (trade-by-trade) basis or on a net basis.

[83] *See* proposed Rule 17Ad–22(a)(2) for definition of "central securities depository services."

[84] As previously indicated, IOSCO and the CPSS are currently in the process of revising their existing sets of international standards which include those related to a clearing agency's ability to withstand participant failures and to meet payment obligations.

settle by the participant with the largest payment obligation?

• Should the Commission require that the clearing agency be able to withstand a settlement failure by more than the largest participant? For example, should the Commission require the clearing agency be able to withstand a settlement failure by the participants with the two largest payment obligations? Why or why not?

Proposed Rule 17Ad–22(d)(15): Physical Delivery Risks

Proposed Rule 17Ad–22(d)(15) would require clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to disclose to their participants the clearing agency's obligations with respect to physical deliveries.[85] For example, if a clearing agency (as part of its operations) takes physical delivery of securities from its participants in return for payments of cash, then it must inform its participants of the extent of the clearing agency's obligations to make payment. A statement by the clearing agency to its participants about the clearing agency's obligations with respect to physical deliveries, among other things, would help to ensure that participants have information that is likely to enhance the participants' understanding of their rights and responsibilities with respect to using the clearance and settlement services of the clearing agency. The Commission preliminarily believes that providing such information to participants would promote a shared understanding regarding physical delivery practices between the clearing agency and its participants which could help reduce the potential for fails and thereby facilitate prompt and accurate clearance and settlement.

The proposed rule would also require clearing agencies to reasonably design their operations to identify and manage the risks that arise in connection with their obligations for physical deliveries. The risks associated with physical deliveries could stem from, among other factors, operational limitations with respect to assuring receipt of physical deliveries and processing of physical deliveries. The Commission preliminarily believes that requiring clearing agencies to identify and manage these risks would reduce the potential that issues will arise as a result of physical deliveries because the clearing agency will have acted preemptively to deal with potential issues that may disrupt the clearance and settlement process. Accordingly, the Commission preliminarily believes this requirement would help a clearing agency to facilitate prompt and accurate clearance and settlement consistent with Section 17A of the Exchange Act.[86]

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(d)(15). In addition, the Commission requests comments on the following specific issues:

• Is the Commission's proposed rule regarding providing information regarding physical delivery and identifying and managing risks associated with physical delivery sufficiently clear? If not, why not and what would be a better alternative?

• How do current practices of clearing agencies with respect to physical delivery compare to the practices that the Commission proposes to require in this rule? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

• What type of information would be useful for participants to receive from a clearing agency regarding the clearing agency's obligations to participants with respect to physical deliveries? What are the advantages or disadvantages of including specific disclosure requirements with respect to any of this information?

• Are there physical delivery obligations that clearing agencies should not assume or for which the Commission should consider additional restrictions?

B. Proposed Rule 17Aj–1 Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

The Commission is proposing Rule 17Aj–1 to incorporate requirements regarding dissemination of pricing and valuation information in the CDS Clearing Exemption Orders into the Commission's rules for security-based swap clearing agencies.[87] Recently, the Commission voted to extend these temporary conditional exemptions from certain provisions of the Federal securities laws until July 16, 2011 to continue to facilitate central clearing of certain CDS.[88] The proposed rule is designed in part to continue the existing dissemination requirements from the CDS Clearing Exemption Orders which would otherwise expire along with those exemption orders.

Proposed Rule 17Aj–1 would require dissemination of pricing and valuation information by security-based swap clearing agencies that perform CCP services.[89] In particular, proposed Rule 17Aj–1 would require each security-based swap clearing agency that performs CCP services to make available to the public, on terms that are fair, reasonable, and not unreasonably discriminatory,[90] all end-of-day settlement prices and any other prices for security-based swaps that the clearing agency may establish to calculate its participants' mark-to-market[91] margin requirements and any

[85] The proposed rule would provide clearing agencies with the flexibility to determine the method by which the clearing agency will state this information to its participants. However, the clearing agencies should take care to develop an approach that provides sufficient notice to its participants regarding the clearing agency's obligations.

[86] 15 U.S.C. 78q–1(b)(3)(F).

[87] *See, e.g.,* the CDS Clearing Exemption Order relating to ICE Trust. "[T]his temporary extension is conditioned on ICE Trust, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust." Exchange Act Release No. 63387 (November 29, 2010) 75 FR 75502 (December 3, 2010).

[88] The extensions of the temporary conditional exemptions applied to central clearing of certain CDS by ICE Trust, ICE Clear Europe, CME and Eurex. *See* Exchange Act Release Nos. 63389 (November 29, 2010), 75 FR 75520 (December 3, 2010); 63390 (November 29, 2010), 75 FR 75518 (December 3, 2010); 63388 (November 29, 2010), 75 FR 75522 (December 3, 2010); 63387 (November 29, 2010) 75 FR 75502 (December 3, 2010) (extending the CDS Clearing Exemption Orders for ICE Clear, Eurex, CME and ICE Trust respectively).

[89] Under the proposed rule, security-based swap clearing agencies would be permitted to use different approaches to make certain pricing and valuation information available to the public. For example, some may choose to engage the services of a third-party vendor while others may make the information directly available through the clearing agency's Web site or some other means.

[90] Proposed Rule 17Aj–1 does not prohibit charges that may be assessed with respect to security-based swap clearing agencies making this information available to the public as long as such charges are fair, reasonable, and not unreasonably discriminatory. The fair, reasonable, and not unreasonably discriminatory requirements for open access to information pursuant to proposed Rule 17Aj–1 are consistent with requirements the Commission adopted pursuant to the CDS Clearing Exemption Orders as well as in Rule 603(a) of Regulation NMS which requires all exchanges, alternative trading systems, and other broker-dealers that offer individual data feeds to make the data available on terms that are fair and reasonable and not unreasonably discriminatory. *See* 17 CFR 242.603(a).

[91] In this specific context of the margin practices of security-based swap clearing agencies, the term "mark-to-market" refers to the variation margin practices used by a clearing agency to account for ongoing fluctuations in the market value of its participants' security-based swap positions.

other price or valuation information with respect to security-based swaps as is published or distributed by the clearing agency to its participants.[92] The Commission preliminarily believes this requirement should apply to security-based swap clearing agencies that perform CCP services because, based on the Commission's oversight experience pursuant to the CDS Clearing Exemption Orders, price and valuation information with respect to security-based swaps may often be limited and such a requirement could help to provide information to market participants that may otherwise only be available to the participants of a particular clearing agency. Clearing agencies that clear standard securities may not face similar limitations on price and valuation information. As a result, the Commission is proposing this rule only with respect to security-based swap clearing agencies that perform CCP services but is requesting comment on whether the rule should apply more broadly.

As noted above, the Commission granted the CDS Clearing Exemption Orders to promote the use of CCPs with respect to CDS.[93] Section 763(b) of the Dodd-Frank Act provides that certain security-based swap clearing agencies will be deemed registered for the purpose of clearing security-based swaps ("Deemed Registered Provision").[94] The Deemed Registered Provision becomes effective on July 16, 2011.[95] After the Deemed Registered Provision becomes effective, certain clearing agencies would no longer need an exemption from registration as a clearing agency under Section 17A of the Exchange Act in order to clear security-based swaps.[96] Proposed Rule 17Aj–1 would require securities-based swap clearing agencies that perform CCP services, once registered, to make publicly available the same pricing and valuation information required by the CDS Clearing Exemption Orders.

The clearing agencies operating pursuant to the CDS Clearing Exemption Orders have been generating model end-of-day settlement prices for CDS, which they in turn provide to clearing members and use to establish margin requirements for member positions. Pursuant to the terms of the CDS Clearing Exemption Orders, these clearing agencies have also made this information available to the public. The Commission preliminarily believes that public availability of this information and other related pricing data has helped to improve fairness, efficiency, and market competition by making available to all market participants data that may otherwise be available to only a limited subset of market participants. For example, end-of-day settlement prices generated by security-based swap clearing agencies represent pricing during the lifecycle of a security-based swap. As a result, this end-of-day pricing information would generally not be captured as part of any pre- or post-trade market data and may therefore provide additional information for market participants to consider in determining the value of the same or similar security-based swap positions. Accordingly, the Commission is proposing Rule 17Aj–1 to incorporate the current requirements for dissemination of price and valuation information under the CDS Clearing Exemption Orders.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Aj–1. In addition, the Commission requests comments on the following specific issues:

- Is the current requirement in the CDS Clearing Exemption Orders to provide certain pricing information helpful in promoting price transparency and efficiency in the CDS market? If so, why? If not, why not? Are there ways in which the requirement could be improved, for instance to ensure better access to those who may want to access the information but find it difficult to obtain?
- Have market participants found the standard to make information available to the public on terms that are fair, reasonable, and not unreasonably discriminatory sufficiently clear? If not, what type of additional guidance would be useful? Should it be expanded to apply to all clearing agencies? Why or why not?
- Is there any other pricing information, such as with respect to valuation of security-based swaps by clearing agencies, that the Commission should consider requiring security-based swap clearing agencies to make available to the public?

C. Proposed Rule 17Ad–23 Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

The Commission is proposing Rule 17Ad–23 to require all clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to protect the confidentiality of transaction information received by the clearing agency. Such transaction information may include, but is not limited to, trade data, position data, and any non-public personal information about a clearing agency participant or any of its participants' customers. The Commission preliminarily believes that such policies and procedures would help to limit the potential misuse of confidential information that could impede prompt and accurate clearance and settlement and reduce confidence in the operations of the clearing agency.

The proposed rule also provides that the required written policies and procedures shall include, but are not limited to, (a) limiting access to confidential trading information of clearing members to those employees of the clearing agency who are operating the system or responsible for its compliance with applicable laws or rules and (b) limitations on personal trading by employees and agents of the clearing agency. This proposed requirement would incorporate certain conditions under the CDS Clearing Exemption Orders previously granted to security-based swap clearing agencies related to the confidential treatment of proprietary information of participants.[97] As an intermediary in

[92] Clearing agencies may destroy or otherwise dispose of records at the end of five years consistent with Rule 17a–6 of the Exchange Act. *See* 17 CFR 240.17a–6.

[93] *See* discussion *supra* in Section I.

[94] *See* Public Law 111–203 § 763(b) (adding new Section 17A(l) to the Exchange Act. Under this Deemed Registered Provision, eligible clearing agencies will be required to comply with all requirements of the Exchange Act, and the rules thereunder, applicable to registered clearing agencies to the extent it clears security-based swaps after the effective date of the Deemed Registered Provision, including, for example, the obligation to file proposed rule changes under Section 19(b) of the Exchange Act.

[95] *See* Public Law 111–203 § 774.

[96] ICE Trust, ICE Clear Europe and CME are each eligible for the Deemed Registered Provision based on the specified criteria in Section 763(b) of the Dodd-Frank Act. *See* Exchange Act Release Nos. 63389 (November 29, 2010), 75 FR 75520 (December 3, 2010); 63390 (November 29, 2010), 75 FR 75518 (December 3, 2010); 63388 (November 29, 2010), 75 FR 75522 (December 3, 2010); 63387 (November 29, 2010), 75 FR 75502 (December 3, 2010) (extending the CDS Clearing Exemption Orders for ICE Clear, Eurex, CME and ICE Trust respectively).

[97] *See, e.g.,* CDS Clearing Exemption Order for ICE Trust. "ICE Trust shall establish and maintain adequate safeguards and procedures to protect clearing members' confidential trading information. Such safeguards and procedures shall include: (A) Limiting access to the confidential trading information of clearing members to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (B) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and

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security transactions, a clearing agency receives confidential information which, if not protected, could disclose the terms of market participant's trades, trading strategies, or non-public personal information. The Commission believes that the requirement that clearing agencies operating under the CDS Clearing Exemption Orders develop policies and procedures to limit access to confidential information and develop standards restricting trading that may be based on confidential information has contributed to the formation of more robust controls limiting the potential misuse of confidential information (such as trading based on non-public information) and therefore preliminarily believes that it would be appropriate for all clearing agencies to be subject to these requirements.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–23. In addition, the Commission requests comments on the following specific issues:

- How do clearing agencies currently maintain confidentiality of the transaction information they receive? How do those practices compare to what the proposed rule requires? What are the expected incremental costs to clearing agencies in connection with adding to or revising their current practices to implement the Commission's proposed rule?
- Is the current requirement in the CDS Clearing Exemption Orders helpful in restricting the misuse of confidential information in the CDS market? If so, why? If not, why not? Are there ways in which the requirement could be improved, for instance by permitting fewer restrictions on access to information within a clearing agency?
- In addition to the types of transaction information discussed, what other kinds of transaction information do clearing agencies receive? To what extent would this information be non-public?
- How do clearing agencies monitor or restrict their employees' and agents' trading activities? What are the advantages or disadvantages of such methods?
- Should the Commission propose any specific restrictions (such as prohibitions on trading) instead of having clearing agencies develop their own policies and procedures?
- Should the Commission require the written policies and procedures of the clearing agency to provide for a clear audit trail of transaction information that is processed by the clearing agency? Please explain.
- Instead of applying this proposed rule to all clearing agencies, should the Commission consider requiring that only certain types of clearing agencies be subject to this requirement (*e.g.,* security-based swap clearing agencies)? Why or why not?

D. Proposed Rule 17Ad–24: Exemption From Clearing Agency Definition for Certain Registered Securities-Based Swap Dealers and Registered Security-Based Swap Execution Facilities

Section 3(a)(23)(B) of the Exchange Act currently excludes from the definition of clearing agency certain national securities exchanges, dealers, and certain other entities.[98] These exclusions are designed to limit the potential for overlapping or duplicative requirements that may otherwise be imposed on these regulated entities. Because the Dodd-Frank Act creates new categories of entities in the security-based swap markets that may perform functions similar to the functions performed by the excluded entities under Section 3(a)(23)(B) of the Exchange Act in the traditional securities markets, the Commission is considering whether a similar exclusion from the definition of clearing agency may be warranted.

The Commission preliminarily believes that exemptions from the clearing agency definition with respect to registered security-based swap dealers' and registered security-based swap execution facilities' activities, which are comparable to functions carved out from the definition of clearing agency for dealers and exchanges in the traditional securities markets, is necessary and appropriate, in the public interest, and is consistent with the protection of investors because it would mitigate the potential for overlapping or duplicative requirements consistent with prior exclusions from the definition of the term clearing agency. Accordingly, pursuant to the Commission's authority under Section 36 of the Exchange Act,[99] the Commission is proposing Rule 17Ad–24 to exempt certain registered security-based swap dealers and registered security-based swap execution facilities from the definition of clearing agency.

Specifically, proposed Rule 17Ad–24 would provide that a registered security-based swap dealer would not be considered a clearing agency solely by reason of functions it performs as part of customary dealing activities, or solely because it acts on behalf of a clearing agency or a participant in connection with services performed by the clearing agency. For example, a security-based swap dealer that acts as an intermediary in making payments or deliveries or both in connection with transactions in securities as part of its customary dealing activities would not be considered a clearing agency. The exemptions in proposed Rule 17Ad–24 for security-based swap dealers mirror exclusions already applicable to dealers under Section 3(a)(23)(B) of the Exchange Act.

In addition, proposed Rule 17Ad–24 provides that a registered security-based swap execution facility would not be considered a clearing agency solely because it provides facilities for comparison of data relating to the terms

maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed." Exchange Act Release Nos. 59527 (March 6, 2009), 74 FR 10791 (March 12, 2009), Exchange Act Release No. 61119 (December 4, 2009), 74 FR 65554 (December 10, 2009) and Exchange Act Release No. 61662 (March 5, 2010), 75 FR 11589 (March 11, 2010) and 63387 (November 29, 2010), 75 FR 75502 (December 3, 2010).

[98] 15 U.S.C. 78c(a)(23)(B). The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in 15 U.S.C. 78c(a)(25)(E).

[99] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class of classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

of settlement of securities transactions effected on such registered security-based swap execution facility. The exemptions in proposed Rule 17Ad–24 for security-based swap execution facilities mirror exclusions applicable to national securities exchanges under Section 3(a)(23)(B) of the Exchange Act.

The Commission cautions, however, that security-based swap dealers and security-based swap execution facilities that engage in clearing agency activities beyond the scope of the proposed exemptions could be considered a clearing agency under the broad definition in Section 3(a)(23) of the Exchange Act. Moreover, other participants in the security-based swap market could also qualify as a clearing agency given the broad definition of clearing agency under the Exchange Act.

If a participant in the security-based swap market qualified as a clearing agency, it would be required to register with the Commission. Section 763(b) of the Dodd-Frank Act adds a new Section 17A(g) to the Exchange Act, which directs entities that use instrumentalities of interstate commerce to perform clearing agency functions for security-based swaps to register with the Commission. The Commission notes that the definition of clearing agency under Section 3(a)(23)(A) of Exchange Act is defined broadly to include any person who:

- Acts as an intermediary in making payments or deliveries or both in connection with transactions in securities;
- Provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities;
- Acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry, without physical delivery of securities certificates (such as a securities depository); or
- Otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates (such as a securities depository).[100]

Based on this broad definition, the Commission preliminarily believes that certain service providers that facilitate security-based swap contract management may meet the clearing agency definition. The Commission preliminarily believes the following activities, if engaged in by security-based swap market participants, would qualify these participants as clearing agencies and therefore trigger the statutory requirement to register as clearing agencies: [101]

- *Collateral Management Activities.* Collateral management involves calculating collateral requirements and facilitating the transfer of collateral between counterparties. Entities that calculate net payment obligations among counterparties for security-based swaps and provide instructions for payments, including with respect to quarterly interest, credit events, and upfront fees, are likely acting as an intermediary in making payments or deliveries or both in connection with transactions in securities. As a result of acting as such an intermediary in making payments or deliveries or both in connection with transactions in securities, the Commission preliminarily believes that these entities would fall within the definition of a clearing agency [102] and would generally need to register.
- *Trade Matching Services.* "Matching service" is the term that is used to describe the process whereby an intermediary compares each market participant's trade data regarding the terms of settlement of securities transactions, in order to reduce the number of settlements of securities transactions, or to allocate securities settlement responsibilities. An intermediary that captures trade information regarding a securities transaction and performs an independent comparison of that information which results in the issuance of binding matched terms to the transaction is providing matching services and falls within the definition of clearing agency.[103] As a result of comparing each market participant's trade data regarding the terms of settlement of securities transactions, in order to reduce the number of settlements of securities transactions, or to allocate securities settlement responsibilities, the Commission preliminarily believes that entities providing these trade "matching services" with respect to security-based swaps would meet the statutory definition of a clearing agency [104] and would generally need to register.[105] However, the Commission also preliminarily believes that providing preliminary comparisons, such as those provided by certain affirmation and novation service providers that are followed by independent comparisons that result in the issuance of legally binding matched terms, would generally not fall within the definition of clearing agency. Similarly, the Commission preliminarily believes that reconciliation service providers that function solely to permit parties to reconcile trade information records with their counterparties would generally not fall within the definition of clearing agency.
- *Tear Up/Compression Services ("Tear Up services").*[106] Based on discussions between the Commission staff and market participants, the Commission understands that Tear Up service providers generally operate in the following manner:
  - Tear Up services execute an algorithm seeking to reduce the gross notional value of trades and the total number of trades but do not alter the counterparty risk or market risk associated with the trades beyond specified parameters.
  - When using a Tear Up service, the users send all transactions they are willing to terminate to the service. Each user sets tolerances for counterparty exposures it is willing to absorb and how much money it is willing to pay in trade termination costs. The submitted transactions are matched using an

[100] 15 U.S.C. 78c(a)(23)(A).

[101] The Commission stresses that the functions highlighted herein are not an exhaustive list and urges each security-based swap lifecycle event service provider to consider whether its functions place it within the clearing agency definition.

[102] *See supra* note 98 and accompanying text.

[103] *See also* Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 (April 13, 1998) (File No. S7–10–98) ("A vendor that provides a matching service will actively compare trade and allocation information and will issue the affirmed confirmation that will be used in settling the transaction.").

[104] *See supra* note 98 and accompanying text.

[105] *See* Exchange Act Release No. 63727 (January 14, 2011) 76 FR 3859 (January 21, 2011) (discussing generally, at footnotes 20 through 22 and the accompanying text, the confirmation process for security-based swap transactions and the Commission's preliminary expectations about the role of matching services in that setting).

[106] Tear-up or multilateral portfolio trade compression services for OTC derivatives seek to eliminate unnecessary or duplicative trades from the market while maintaining a market participant's overall exposure or risk in the market. This allows dealers to reduce operational risk, freeing up liquidity and capital. By reducing the gross notional outstanding of OTC derivatives in normal times, portfolio trade compression provides effective measures to address the risk associated with uncoordinated, disorderly close-out transactions in individual dealers of the positions of a defaulting major dealer. Compression is offered by several vendors and major market participants are now engaged in regular compression exercises. *See* Financial Stability Board, *Implementing OTC Derivatives Market Reforms,* (October 25, 2010), *available at http://www.Financialstabilityboard.org/publications/r_101025.pdf.*

algorithm and tolerances specified by the user.

○ The service then proposes terminations across all parties who participated, including, payments for termination. The users consider the proposal, check their own records, and, if they choose to accept the proposal, fax or otherwise notify their acceptance to the service. If the service receives acceptances from all users, the transaction is considered binding and the relevant transactions are considered terminated.

○ The users generally exchange payments and confirmations outside the service. The Tear Up service will send the completed files to a third party service provider for matching and the "torn up" transactions are terminated in bulk at the security-based swap data repository. The security-based swap data repository maintains a record of which parties terminated the "torn up" trades.

The Commission preliminarily believes that a Tear Up service provider that performs these functions would generally fall within the definition of clearing agency and would need to register because, among other activities, it would be acting as an intermediary that provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or the allocation of securities settlement responsibilities.[107]

The Commission requests comment on all aspects of the proposed exemptions from the definition of clearing agency for registered security-based swap dealers and registered security-based swap execution facilities in proposed Rule 17Ad–24. The Commission also requests comments on which activities fall within the definition of clearing agency, particularly within the context of activities in the security-based swap market. In addition, the Commission requests comments on the following specific issues:

• What are the advantages or disadvantages of the Commission granting the proposed exemptions from the definition of clearing agency? If there are disadvantages to these proposed exemptions, what are they and how do they compare to the benefits?

• Under what circumstances are market participants likely to use the proposed exemptions for registered security-based swap dealers and registered security-based swap execution facilities? Are there any additional terms or conditions that the Commission should consider imposing with respect to the proposed exemptions? Are there any advantages or disadvantages related to the proposed exemptions that the Commission should consider?

• Under Section 17A(b)(3)(I) of the Exchange Act, the rules of a clearing agency should not impose any undue burden on competition. Should the Commission augment this statutory requirement by adopting rules that prohibit clearing agencies from entering into certain types of arrangements? If so, which arrangements, and why? In particular, should the Commission promulgate rules concerning any revenue sharing arrangements used by clearing agencies? Please explain why or why not. Are revenue sharing arrangements common among clearing agencies? How are they used? Are revenue sharing arrangements a manner of directing funds to a subset of clearing members, which funds otherwise could support a general reduction of clearing costs that could be equitably distributed among members? If the Commission adopts rules regarding revenue sharing, what aspects of the revenue sharing arrangements should the rules address and how might the rules be designed to promote competition and fair access to the clearing agency? If the Commission promulgates rules regarding certain arrangements, how should the Commission mitigate the potential risk of unduly limiting the ability of clearing agencies to develop new commercial arrangements?

• Are there any additional entities for which the Commission should consider providing exemptions with respect to the definition of clearing agency, particularly in the context of the security-based swap market? If so, why would providing such exemptions be necessary or appropriate in the public interest, and consistent with the protection of investors? Under what terms and conditions should the Commission consider providing such exemptions?

• Is there additional information about any of the security-based swap services described by the Commission that would affect the consideration of whether these activities trigger the definition of clearing agency?

• Are there any other security-based swap services that may fall within the clearing agency definition? If so, what are those services? Why would they be appropriately classified as clearing agency functions?

• If a security-based swap clearing agency that does not provide CCP services is required to register with the Commission as a clearing agency, are there certain requirements that are applicable or proposed to be applicable to other clearing agencies that should not apply to these security-based swap clearing agencies? For example:

○ Should non-CCP security-based swap clearing agencies be subject to proposed Regulation MC,[108] which the Commission proposed on October 14, 2010 to mitigate the potential conflicts of interest that could exist at certain entities, including security-based swap clearing agencies, through conditions and structures relating to ownership, voting, and governance of these entities? Why or why not? Should proposed Regulation MC apply to some but not all security-based swap clearing agencies that do not provide CCP services? If so, which ones?

○ Should non-CCP security-based swap clearing agencies be subject to proposed Rule 17Ad–25, which would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest? Why or why not? Should proposed Rule 17Ad–25 apply to some but not all security-based swap clearing agencies that do not provide CCP services? If so, which ones?

○ Should non-CCP security-based swap clearing agencies be subject to proposed Rule 17Ad–26, which would require each clearing agency to establish governance standards for its board or board committee members? Why or why not? Should proposed Rule 17Ad–26 apply to some but not all security-based swap clearing agencies that do not provide CCP services? If so, which ones?

• What are the costs associated with requiring the types of entities described above that do not offer CCP services to register as a clearing agency and operate as an SRO (including compliance with ongoing SRO rule filings requirements)? Please consider both the initial and ongoing costs, and please consider the burdens that such requirements may place on the ability of these entities to operate in a commercially viable manner. Are there competitors who might offer competing services (either in the United States or abroad) without being subject to these requirements? Are these costs offset by regulatory requirements or industry commitments to use certain security-based swap service providers that fall within the definition of a clearing agency? What implications would registration of these entities have for the security-based swap

[107] *See supra* note 98 and accompanying text.

[108] *See* Exchange Act Release No. 63107, 75 FR 65882, *supra* note 45.

markets more generally, and for the availability of their services to market participants?

E. Proposed Amendment of Rule 17Ab2–1: Registration of Clearing Agencies

The Commission is proposing to amend Rule 17Ab2–1(c) regarding the registration of clearing agencies. Rule 17Ab2–1(c) currently provides that, if requested by an applicant, the Commission may grant a temporary registration providing for exemptions from certain registration requirements in Section 17A(b)(3) of the Exchange Act. Prior to the Dodd-Frank Act's amendments to the Exchange Act, the Commission was not restricted in its ability to grant exemptions from registration requirements to any category of clearing agencies. Therefore, the exemptions discussed in Rule 17Ab2–1(c) applied with respect to all clearing agencies.

The Dodd-Frank Act amended Section 36 of the Exchange Act and altered the Commission's authority to provide exemptions from the registration requirements applicable to security-based swap clearing agencies pursuant to Section 17A(g) of the Exchange Act.[109] Accordingly, the Commission proposes to amend Rule 17Ab2–1 to reflect these changes. Specifically, the proposal would amend Rule 17Ab2–1(c) to clarify that when granting a temporary registration, the Commission may do so for "a specific period of time and may exempt, other than for purposes of section 17A(g) of the Act, the registrant from one or more of the requirements * * * ". The Commission preliminarily believes this proposed amendment to Rule 17Ab2–1(c), clarifying how the rule would operate in light of changes to the Commission's exemptive authority under Section 36 of the Exchange Act with respect to Section 17A(g) of the Exchange Act, is appropriate given the change to the Commission's exemptive authority under Section 36 of the Exchange Act effected by the Dodd-Frank Act.[110]

The Commission also proposes other technical changes to Rule 17Ab2–1(c) unrelated to the Dodd-Frank Act that the Commission preliminarily believes would help in the administration of the rule pertaining to temporary registrations and would thereby be appropriate in the public interest, for the protection of investors.[111] Specifically, the Commission proposes to amend Rule 17Ab2–1(c) to clarify that the temporary registration may be issued at the discretion of the Commission. The Commission preliminarily believes that the ability to grant a temporary registration provides useful flexibility to further evaluate whether a clearing agency is meeting required standards before granting a permanent registration. Operational, resource, internal control or other issues may only become apparent after a clearing agency has commenced operations. In addition, the proposal would amend the current provision indicating that the Commission may grant the temporary registration for eighteen months or such longer period as the Commission may provide by order, to state that the Commission may grant the temporary registration for twenty-four months or such longer period as the Commission may provide by order.[112] The Commission preliminarily believes that the temporary registration process should explicitly provide greater time to allow the clearing agency to operate before registration becomes final because doing so would enhance the Commission's capacity to provide oversight that promotes prompt and accurate clearance and settlement.

Request for Comment

The Commission generally requests comments on all aspects of the proposed amendments to Rule 17Ab2–1. In addition, the Commission requests comments on the following specific issues:

- Are the proposed changes to Rule 17Ab2–1 setting forth the restrictions on providing exemptions with respect to security-based swap clearing agencies sufficiently clear?
- Would any additional changes to Rule 17Ab2–1 regarding how the clearing agency registration requirements apply with respect to security-based swap clearing agencies be beneficial to market participants?
- What are the advantages and disadvantages of the proposed changes to the temporary registration process, such as stating the temporary registration may be issued at the discretion of the Commission and the revisions to the timeframe for the temporary registration?

F. Proposed Rule 17Ad–25: Clearing Agency Procedures To Identify and Address Conflicts of Interest

The Commission is proposing Rule 17Ad–25 to require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and reasonably existing or potential conflicts of interest.[113] For example, there may be actual or potential conflicts of interest between the activities of a clearing agency and the interests of its participants or board members, which could affect decision making by officers or directors or actions by participants in seeking to influence its operations. The proposed rule also would require the clearing agency's policies and procedures to be reasonably designed to minimize conflicts of interest in decision making by the clearing agency.

The Commission preliminarily believes it is important for clearing agencies to evaluate their activities and determine potential sources for conflicts of interests that exist within their organization and to reasonably address such conflicts so that they do not disrupt the clearing agency's ability to facilitate prompt and accurate clearance and settlement. The Commission also preliminarily believes that requiring clearing agencies, under proposed Rule 17Ad–25, to have reasonably designed policies and procedures to minimize conflicts of interest in decision making by the clearing agency would facilitate the development of tailored policies and procedures that mitigate conflicts specific to the clearing agency's business. Moreover, the Commission preliminarily believes the proposed rule would be useful in facilitating its oversight of clearing agencies by providing a documented plan against which the Commission could evaluate a clearing agency's efforts to mitigate conflicts and potentially provide the Commission with a better understanding of the potential sources of conflicts for a specific clearing agency.

[109] *See* Section 772 of Public Law 111–203, 124 Stat. 1376 (2010) amending Section 36 of the Exchange Act.

[110] *Id.*

[111] *See* 15 U.S.C. 78q–1(d).

[112] This change would also include a conforming change to the timing for granting a non-temporary registration.

[113] Proposed Rule 17Ad–25 would complement other applicable requirements concerning conflicts of interests at clearing agencies that may also separately apply. These other requirements include the existing regulatory framework of Section 17A of the Exchange Act and the conflicts-related requirements contemplated by proposed Rule 17Ad–22(d)(8) as well as Section 765 of the Dodd-Frank Act with respect to security-based swap clearing agencies. *See supra* Section III.A. (proposing that clearing agencies be required to have governance arrangements that are clear and transparent to fulfill Exchange Act requirements and to support the objectives of owners and participants and promote the effectiveness of the clearing agency's risk management procedures). *See also* Exchange Act Release No. 63107, 75 FR 65882, *supra* note 45.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–25. In addition, the Commission requests comments on the following specific issues:

• Under the proposal, clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest. Such policies and procedures would also be required to be reasonably designed to minimize conflicts of interest in decision making by the clearing agency. Should the Commission require any specific measures to address conflicts of interests, such as mandating certain boards or board committee compositions with respect to all clearing agencies instead of using a policies and procedures approach? What are the advantages and disadvantages of a more prescriptive approach?

• What, if any, additional guidance by the Commission would be helpful regarding how clearing agencies should evaluate their own activities and determine the potential sources of conflicts?

• Should the Commission consider requiring only certain types of clearing agencies (*e.g.,* security-based swap clearing agencies) to be subject to this requirement? Please explain why or why not. Are there special considerations, such as market concentration, affecting security-based swap clearing agencies that make it particularly important for them to establish, implement, maintain and enforce written policies and procedures to identify and address existing or potential conflicts of interest? If so, what are those special considerations and how would this requirement address them? If not, how would various types of clearing agencies be affected by this requirement? Would there be advantages to maintaining one requirement for all clearing agencies? Why or why not?

G. Proposed Rule 17Ad–26: Standards for Board or Board Committee Directors

The Commission is proposing Rule 17Ad–26 to require clearing agencies to establish governance standards for their directors serving on the board or board committees. The Commission preliminarily believes that directors serving on the board and board committees of a clearing agency play a vital role in creating a framework that supports prompt and accurate clearance and settlement because of their role in the decision-making process within a clearing agency. Accordingly, the expertise, diversity of perspectives, conduct and incentives of directors serving on the board and board committees of a clearing agency are likely to affect its effective operation. For example, a lack of expertise by board members or board committee members may deter them from challenging decisions by management and lessen the potential that management will escalate appropriate issues for the board's consideration. In addition, clearing agencies should consider the extent to which persons who have been found to have violated the securities laws, or other similar laws or statutes, may not be fit to serve on the clearing agency's board or board committees. Moreover, a lack of clear guidance as to the roles and responsibilities of directors and procedures for assessing their performance may negatively impact the efficient functioning of the clearing agency.

Therefore, the Commission is proposing Rule 17Ad–26 to require that clearing agencies establish and articulate baseline standards for appointing and retaining their directors, which may help to increase the potential that directors' actions will benefit the clearing organization. The proposed rule specifies that the clearing agency's standards must address the following areas:

• A clear articulation of the roles and responsibilities of directors serving on the clearing agency's board and any board committees;

• Director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management; [114]

• Disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws; and [115]

• Policies and procedures for the periodic review by the board or board committees of the performance of individual members.

The proposed rule would require the clearing agency to clearly articulate the roles and responsibilities of directors serving on the clearing agency's board and any board committees. This would involve the clearing agency setting forth the duties of directors and the functions within the clearing agency for which they are responsible. The Commission preliminarily believes that such a delineation of responsibilities will help to focus directors' efforts to areas that promote the effective operations of a clearing agency.

The proposed rule would also require that the clearing agency establish director qualifications that address the clearing agency's criteria for expertise in the securities industry, clearance and settlement of securities transactions and financial risk management because each of these would have a bearing on the director's ability to understand the operations and risks of a clearing agency. When developing these criteria, clearing agencies could consider the specialized needs of individual board committees, the overall mix of expertise within the board or on a committee, and the benefits of having members with different backgrounds (*e.g.,* regulatory, trading, and risk management experience). The Commission preliminarily believes that this requirement would be beneficial because it could provide greater focus within a clearing agency for the selection of directors that have appropriate expertise, as determined by the clearing agency, which would facilitate the ability of the clearing agency to provide prompt and accurate clearance and settlement.

In addition, the proposed rule would require the development of disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws. For example, a clearing agency might consider whether to preclude a person

[114] The Commission notes that in other contexts under the Exchange Act certain persons have been required to meet qualification standards. For example, Section 15(b)(7) requires all Commission-registered brokers and dealers to meet such standards of operational capability and all natural persons associated with registered brokers and dealers to meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. *See* 15 U.S.C. 78o(b)(7). Section 15(b)(7) permits the Commission to rely on the rules of certain SROs in devising and administering these requirements. For example, the NASD Rule 1000 series contains registration and qualification requirements for registered representatives and principals associated with FINRA-member firms. In addition, NASD Rule 3010 requires all FINRA members to have a supervisory system that provides for, among other things, reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

[115] The Exchange Act and the rules promulgated thereunder contain a number of restrictions on the ability of certain registered entities, including clearing agencies, brokers, dealers, transfer agents and other SROs, to be associated with persons subject to a "statutory disqualification," as such term is defined in Section 3(a)(39) of the Exchange Act. 15 U.S.C. 78c(a)(39). For example, Section 17A(b)(4) of the Exchange Act provides that a "registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification." 12 U.S.C. 78q–1(b)(4).

who has had a securities license denied, suspended, revoked or restricted by a regulatory authority from serving as a director. The Commission preliminarily believes that such qualification criteria are important with respect to identifying potential issues that would call into question the ability of the persons who are responsible for the governance of the clearing agency to ensure that it complies with applicable laws and regulations.

Finally, the proposed rule would require the clearing agency to establish policies and procedures for the periodic review by the board or a board committee of the performance of its individual members. As previously noted, the Commission preliminarily believes that directors serving on the board or board committees of a clearing agency play a vital role in creating a framework that supports prompt and accurate clearance and settlement because of their role in decision-making processes. Therefore, the Commission preliminarily believes that the board, or a board committee, should establish policies and procedures for the periodic review of the performance of the relevant directors. Such a review should consider the contributions that the directors are making to the clearing agency and to its ability to operate in an effective manner. The policies and procedures for such a review, to be developed by the clearing agency as appropriate given its particular circumstances, might include self-assessments, peer review procedures, or the use of internal or external parties or consultants to facilitate an evaluation of the performance of each relevant director.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 17Ad–26. In addition, the Commission requests comments on the following specific issues:

- Are there any additional standards for director or board committee members that the Commission should consider requiring? Should any of the requirements in proposed Rule 17Ad–26 be modified or changed? If so, how?
- How direct should the Commission's role be in the oversight and monitoring of the composition and activities of clearing agency boards and board committees? If the Commission's role should be more direct, what mechanisms or structure would facilitate the Commission taking such a role? For example, should the Commission consider any additional requirements related to fiduciary duties to either enhance mitigation of conflicts or address deficiencies?
- What, if any, additional guidance by the Commission would be helpful regarding standards for a clearing agency's directors?
- Should the Commission develop more or less prescriptive requirements regarding standards for directors or board committee members? What are the advantages or disadvantages of any contemplated approach?
- The Commission has previously proposed independence requirements with respect to the board and board committees of security-based swap clearing agencies. Should the boards of all clearing agencies consist of a certain proportion of independent directors? Please explain why or why not.
- Should the Commission require clearing agencies to develop any limits on the type or amount of compensation that directors may receive, such as including prohibiting compensation of independent and other non-management directors from being linked to the business performance of the clearing agency, or being subject to discretion of management? Please explain.
- Should the Commission consider requiring only certain types of clearing agencies (*e.g.,* security-based swap clearing agencies) to be subject to this requirement? Please explain why or why not. Are there special considerations, such as market concentration, affecting security-based swap clearing agencies that make these governance requirements particularly important for them? If so, what are those special considerations and how would this requirement address them? If not, how would clearing agencies that provide different types of clearing services be affected by the application of this requirement? Would there be advantages to maintaining one requirement for all clearing agencies? Why or why not?

H. Proposed Rule 3Cj–1 Designation of Chief Compliance Officer

The Dodd-Frank Act amended the Exchange Act to require each clearing agency to appoint a chief compliance officer ("CCO") and specifies the CCO's duties.[116] The Commission is proposing Rule 3Cj–1 to establish requirements concerning a clearing agency's CCO. In particular, proposed Rule 3Cj–1 would incorporate the duties of a clearing agency's CCO that are enumerated in Exchange Act Section 3C(j)[117] and impose additional requirements.

Consistent with the requirements under Section 3C(j) of the Exchange Act, proposed Rule 3Cj–1(a) would require each clearing agency to designate a CCO. The Commission preliminarily believes that a clearing agency would not necessarily need to hire an additional person to serve as its CCO. Instead, a clearing agency could designate an individual already employed by the clearing agency as its CCO.

Consistent with the requirements under Section 3C(j) of the Exchange Act, under proposed Rule 3Cj–1(b), each CCO shall: (1) Report directly to the board or to a senior officer of the clearing agency; (2) in consultation with its board or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise; (3) be responsible for administering each policy and procedure that is required to be established pursuant to Section 3C of the Exchange Act and rules and regulations thereunder; (4) ensure compliance with the Exchange Act and the rules and regulations thereunder; (5) establish policies and procedures for the prompt remediation of any compliance issues identified by the CCO, and (6) establish and follow appropriate procedures for the prompt handling of management response, remediation, retesting, and closing of non-compliance issues.

In order to clarify the requirements under Section 3C(j) of the Exchange Act, the Commission is also proposing (as part of proposed Rule 3Cj–1(e)) to define the term senior officer for purposes of proposed Rule 3Cj–1 to include the chief executive officer, or other equivalent officer. As the chief executive officer is generally the most senior officer in a clearing agency, the Commission preliminarily believes that such officer should be identified as the responsible individual for purposes of the proposed rule because it would help to promote enhanced focus on compliance issues and thereby potentially lead to more effective operations at a clearing agency.

Consistent with the requirements under Section 3C(j) of the Exchange Act, proposed Rule 3Cj–1(c) would require the CCO to prepare, sign and submit an annual compliance report that describes (i) the compliance of the clearing agency with the Federal securities laws and the rules and regulations thereunder, and (ii) each policy and procedure of the clearing agency (including the code of ethics and conflict of interest policies of

[116] Public Law 111–203, § 763(a) (adding Exchange Act Section 3C(j)).

[117] *Id.*

the registered clearing agency). Also consistent with the requirements under Section 3C(j) of the Exchange Act, proposed Rule 3Cj–1(c) would require the annual compliance report to accompany each appropriate financial report of the clearing agency that is required to be furnished to the Commission pursuant to the Exchange Act and the rules thereunder. Finally, the CCO must certify under penalty of law that the compliance report is accurate and complete.

In addition, to clarify and enhance the requirements under Section 3C(j) of the Exchange Act, the Commission is proposing to require that each annual compliance report:

- Be submitted to the board of directors and audit committee (or equivalent bodies) of the clearing agency promptly after the date of execution of the required certification and prior to filing of the report with the Commission;
- Be filed with the Commission in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T; [118] and
- Be filed with the Commission within 60 days after the end of the fiscal year covered by such report.

The Commission preliminarily believes it would be appropriate to require that the annual compliance report be submitted to the board of directors and audit committee (or equivalent bodies) prior to filing of the report with the Commission because it would help to focus attention at senior levels of the clearing agency on the contents of the report that is being filed with the Commission. This in turn could help to promote a robust compliance program at the clearing agency by ensuring appropriate attention and response at the Board level.

In addition, the Commission preliminarily believes that it would be appropriate for clearing agencies to file the report with the Commission in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual in order to provide an electronic system for submitting this report that builds on an existing framework for filings to the Commission. This in turn should help to ease the potential administrative burdens on clearing agencies. As previously noted, the proposed rule would also require that the annual compliance report be filed with the Commission within 60 days after the end of the fiscal year covered by such report. The report would be subject to public availability and the Commission anticipates making such report available through its EDGAR system. The Commission preliminarily believes such time frame would be appropriate because it should give clearing agencies adequate time to review and draft a report based on actions that occurred during the prior year, while also limiting the potential that the information would be stale and thus not be as useful in the Commission's oversight of the clearing agency.

Request for Comment

The Commission generally requests comments on all aspects of proposed Rule 3Cj–1. In addition, the Commission requests comments on the following specific issues:

- Is the definition of "senior officer" appropriate? If not, is it over-inclusive or under-inclusive and how should it be defined?
- Should the Commission include in its proposed rule a requirement that a CCO's compensation must be approved by the board?
- Should the Commission include in its proposed rule a requirement that a CCO may only be removed by action of the board?
- Are there other measures that would further enhance the independence and effectiveness of a CCO and that should be prescribed in a rule, such as requiring that a CCO not perform any other functions?
- Should the Commission impose any additional duties on a CCO of a clearing agency?
- Should the Commission provide guidance in its proposed rules about the CCO's procedures for the remediation of non-compliance issues?
- What is the likely effect of the Commission's proposed rule on the development of the financial markets? Would the proposed rule impede the establishment of clearing agencies?
- Does requiring the compliance report to be filed annually with the Commission within sixty days after the end of the fiscal year covered by such report give a clearing agency enough time to prepare the report? Should the Commission consider a longer or short time frame? Please explain.
- Should the Commission require submission of the CCO compliance report to the board before or after submission to the Commission? How would submission of the compliance report to the board before or after submission to the Commission affect the board's review of the compliance report?
- Should the Commission prescribe any specific method of review by the board with respect to the CCO compliance report? For example, should the Commission require that (i) the CCO compliance report include, as appropriate, recommended actions to be taken by the clearing agency to improve compliance or correct any compliance deficiencies, (ii) the board review any such recommendations and determine whether to approve them, and (iii) the clearing agency notify the Commission if the board declines to approve such recommendations, or approves different actions than those recommended in the CCO compliance report? What are the advantages and disadvantages of such an approach? Should clearing agencies be required to have the CCO report directly to the board instead of also permitting reporting to a senior officer of the clearing agency? What would be the advantages and disadvantages of requiring the CCO to report to the board?

IV. General Request for Comments

The Commission seeks comment on all aspects of the proposed rules with respect to clearing agencies. The Commission particularly requests comment from the point of view of investors, entities that are registered as clearing agencies, are likely to become registered clearing agencies, entities operating platforms that currently trade or clear security-based swaps, broker-dealers, and financial institutions.

Title VII requires that the SEC consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability, to the extent possible, and states that in adopting rules, the CFTC and SEC shall treat functionally or economically similar products or entities in a similar manner. In the process of developing the proposed rules the Commission staff has consulted with the CFTC staff.

The CFTC is adopting rules related to derivatives clearing organizations ("DCO") in connection with Section 725

[118] The term "tag" (including the term "tagged") refers to an identifier that highlights specific information submitted to the Commission that is in the format required by the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T. *See* 17 CFR 32.301. The term "EDGAR Filer Manual" is defined in Rule 11 of Regulation S–T as "the current version of the manual prepared by the Commission setting out the technical format requirements for an electronic submission." *See* 17 CFR 232.11. If the Commission adopts Rule 3Cj–1 as proposed, it is possible that clearing agencies might be required to file the annual compliance report in paper until such time as an electronic filing system is operational and capable of receiving the annual compliance report. The Commission would notify clearing agencies as soon as the electronic filing system can accept filings of annual compliance reports.

of the Dodd-Frank Act.[119] Understanding that the Commission and the CFTC regulate different products and markets, and as such, appropriately may be proposing alternative regulatory requirements, we request comments on the effect of any differences between the Commission and CFTC approaches to the regulation of clearing agencies and DCOs respectively. Specifically, would the regulatory approaches under the Commission's proposed rulemaking pursuant to Sections 17A(d), 17A(j) and 3C(j) under the Exchange Act and the CFTC's proposed rulemaking pursuant to Section 725 of the Dodd-Frank Act result in duplicative or inconsistent requirements for market participants subject to both regulatory regimes or result in gaps between those regimes? If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized? Do commenters believe the approaches proposed by the Commission and the CFTC to govern clearing agencies and DCOs are comparable? If not, why? Do commenters believe there are approaches that would result in more comparable treatment? If so, what are they and what would be the advantages and disadvantages of adopting such approaches? Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from our proposal? If so, which one?

Commenters should, when possible, provide the Commission with empirical data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations that they believe should apply, the reasons for their suggested approaches, and their analysis regarding why their suggested approaches would satisfy the statutory mandates of the Exchange Act with respect to clearing agencies.

V. Paperwork Reduction Act

Certain provisions of the proposed rules would impose new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[120] Accordingly, the Commission has submitted the information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the new collection of information is Clearing Agency Standards for Operation and Governance. 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.

A. Summary of Collection of Information

1. Standards for Clearing Agencies

a. Measurement and Management of Credit Exposures

Proposed Rule 17Ad–22(b)(1) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(1) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once each day, and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

b. Margin Requirements

Proposed Rule 17Ad–22(b)(2) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(2) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) Use margin requirements to limit its credit exposures to participants in normal market conditions; (ii) use risk-based models and parameters to set margin requirements; and (iii) review the models and parameters at least monthly.

c. Financial Resources

Proposed Rule 17Ad–22(b)(3) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(3) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions, and if the clearing agency provides CCP services for security-based swaps then a default by the two participants to which it has the largest exposures in extreme but plausible market conditions; provided that if a participant controls another participant or is under common control with another participant, then the affiliated participants shall be collectively deemed to be a single participant.

d. Model Validation

Proposed Rule 17Ad–22(b)(4) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(4) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to such a person.

e. Non-Dealer Access

Proposed Rule 17Ad–22(b)(5) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(5) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons.

f. Portfolio Size and Transaction Volume Thresholds Restrictions

Proposed Rule 17Ad–22(b)(6) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(6) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume.

g. Net Capital Restrictions

Proposed Rule 17Ad–22(b)(7) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(b)(7) would require a clearing agency that provides CCP services to establish,

[119] *See* 75 FR 63113 (October 14, 2010) and 75 FR 77576 (December 13, 2010).

[120] 44 U.S.C. 3501 *et seq.*

implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency. The proposed rule also permits a clearing agency to provide for a higher net capital requirement (*i.e.,* higher than $50 million) as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures, such as scalable limitations on the transactions that the participants may clear through the clearing agency, and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application.

h. Record of Financial Resources

Proposed Rule 17Ad–22(c)(1) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(c)(1) would require that each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a clearing agency that performs CCP services shall calculate and maintain a record of the financial resources necessary to meet the requirement in proposed Rule 17Ad–22Ad–22(b)(3) and sufficient documentation to explain the methodology it uses to compute such financial resource requirement.

i. Annual Audited Financial Report

Proposed Rule 17Ad–22(c)(2) contains "collection of information requirements" within the meaning of the PRA. Proposed rule 17Ad–22(c)(2) would require a clearing agency to post on its Web site an annual financial report which must (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years and be prepared in accordance with U.S. GAAP, except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country the financial statements may be prepared according to U.S. GAAP or IFRS, (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with rule 2–01 of Regulation S–X (17 CFR 210.2–01), (iii) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02).

j. Transparent and Enforceable Rules and Procedures

Proposed Rule 17Ad–22(d)(1) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(1) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

k. Participation Requirements

Proposed Rule 17Ad–22(d)(2) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(2) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. Clearing agencies would also be required to have procedures in place to monitor that participation requirements are met on an ongoing basis, and to have participation requirements that are objective, publicly disclosed, and permit fair and open access.

l. Custody of Assets and Investment Risk

Proposed Rule 17Ad–22(d)(3) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(3) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or delay in access to them and to invest assets in instruments with minimal credit, market, and liquidity risks.

m. Identification and Mitigation of Operational Risk

Proposed Rule 17Ad–22(d)(4) contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(4) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) Identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; (ii) implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and (iii) have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.

n. Money Settlement Risks

Proposed Rule 17Ad–22(d)(5) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(5) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants, and require funds transfers to the clearing agency to be final when effected.

o. Cost-Effectiveness

Proposed Rule 17Ad–22(d)(6) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(6) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

p. Links

Proposed Rule 17Ad–22(d)(7) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(7) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear trades and ensure that the risks are managed prudently on an ongoing basis.

q. Governance

Proposed Rule 17Ad–22(d)(8) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(8) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing

agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.

r. Information on Services

Proposed Rule 17Ad–22(d)(9) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(9) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using their services.

s. Immobilization and Dematerialization of Stock Certificates

Proposed Rule 17Ad–22(d)(10) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(10) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible if the clearing agency performs central securities depository services.

t. Default Procedures

Proposed Rule 17Ad–22(d)(11) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(11) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.

u. Timing of Settlement Finality

Proposed Rule 17Ad–22(d)(12) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(12) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and that intraday or real-time finality is provided where necessary to reduce risks.

v. Delivery Versus Payment

Proposed Rule 17Ad–22(d)(13) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(13) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk linking securities transfers to funds transfers in a way that achieves DVP.

w. Risk Controls To Address Participants' Failure To Settle

Proposed Rule 17Ad–22(d)(14) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(14) would require clearing agencies that perform central securities depository services to establish, implement, maintain and enforce written policies and procedures reasonably designed to institute risk controls when the clearing agency extends intraday credit to participants, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant fully, and that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle. If a participant controls another participant or is under common control with another participant, then the affiliated participants shall be collectively deemed to be a single participant.

x. Physical Delivery Risks

Proposed Rule 17Ad–22(d)(15) would contain "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–22(d)(15) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries. Clearing agencies would also be required to identify and manage the risks that arise in connection with these obligations.

2. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

Proposed Rule 17Aj–1 contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Aj–1 is designed to preserve the information dissemination requirement from the CDS Clearing Exemption Orders.[121] The proposed rule would require every security-based swap clearing agency that performs CCP services to make available to the public all end-of-day settlement prices and any other prices with respect to security-based swaps that it may use to calculate mark-to-market[122] margin requirements for its participants. Proposed Rule 17Aj–1 also would require every security-based swap clearing agency that performs CCP services to make available to the public any other pricing or valuation information with respect to security-based swaps that it otherwise publishes or makes available to its participants. Proposed Rule 17Aj–1 would not require that this information be made available to the public free of charge. Instead, it would require that the information be provided to the public on terms that are fair, reasonable and not unreasonably discriminatory.

3. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

Proposed Rule 17Ad–23 contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–23 would require each registered clearing agency to establish, implement, maintain and enforce written policies and procedures designed to protect the confidentiality of any and all transaction information that the clearing agency receives. Such transaction information may include, but is not limited to, trade data, position data, and any non-public personal information about a clearing agency member or participant or any of its members' or participants' customers. The proposed rule also provides that the required policies and procedures shall include, but are not limited to, (a) limiting access to confidential trading information of clearing members to those employees of the clearing agency who are operating the system or responsible for its compliance with any other applicable laws or rules and (b) standards controlling employees and agents of the clearing agency trading for their personal benefit or the benefit of others.

[121] *See generally* note 6 (providing citations to the CDS Clearing Exemption Orders).

[122] *See supra* note 91 (explaining that in the specific context of the margin practices of security-based swap clearing agencies, the term "mark-to-market" implies the variation margin practices used by the clearing agency to account for ongoing fluctuations in the market value of its participants' security-based swap positions).

4. Exemption From Clearing Agency Definition for Certain Registered Securities-Based Swap Dealers and Registered Security-Based Swap Execution Facilities

Proposed Rule 17Ad–24 provides that a registered security-based swap dealer would not be considered a clearing agency solely by reason of functions performed by such institution as part of customary dealing activities, or solely because it acts on behalf of a clearing agency or a participant in connection with services performed by the clearing agency. In addition, proposed Rule 17Ad–24 provides that a registered security-based swap execution facility would not be considered a clearing agency solely because it provides facilities for comparison of data relating to the terms of settlement of securities transactions. Accordingly, the rule does not impose recordkeeping or information collection requirements, or other collections of information that require approval of the OMB under 44 U.S.C. 3501, *et seq.* Thus, it would not be a "collection of information" within the meaning of the PRA.

5. Registration of Clearing Agencies

The proposed amendment to Rule 17Ab2–1 would mainly clarify that when granting a temporary registration the Commission may do so for "a specific period of time and may exempt, other than for purposes of Section 17A(g) of the Act, the registrant from one or more of the requirements * * *". Accordingly, the proposed rule does not impose recordkeeping or information collection requirements, or other collections of information that require approval of the OMB under 44 U.S.C. 3501, *et seq.* Thus, it would not be a "collection of information" within the meaning of the PRA.

6. Clearing Agency Procedures To Identify and Address Conflicts of Interest

Proposed Rule 17Ad–25 contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–25 would require each clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest, as well as that address methods of minimizing conflicts of interest in decision-making at the clearing agency.

7. Standards for Board or Board Committee Directors

Proposed Rule 17Ad–26 contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 17Ad–26 outlines the proposed standards that would a registered clearing agency would be required to establish for its board members and board committee members. These standards include at least the following areas: (i) A clear articulation of the roles and responsibilities of directors serving on the clearing agency's board and any board committees; (ii) director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management; (iii) disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws; and (iv) policies and procedures for the periodic review by the board or a board committee of the performance of its individual members.

8. Designation of Chief Compliance Officer

Proposed Rule 3Cj–1 contains "collection of information requirements" within the meaning of the PRA. Proposed Rule 3Cj–1 would require each registered clearing agency to designate a CCO. Under proposed Rule 3Cj–1(b), the CCO would be responsible for, among other matters, establishing policies and procedures for the remediation of non-compliance issues identified by the CCO and establishing and following appropriate procedures for the prompt handling of management response, remediation, retesting, and closing of compliance issues.

Under Proposed Rule 3Cj–1(c), the CCO would also be responsible for preparing and signing an annual compliance report that contains a description of (i) the compliance of the clearing agency with respect to the Federal securities laws and the rules and regulations thereunder, and (ii) each policy and procedure of the clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency). This compliance report must accompany each appropriate financial report of the clearing agency that is required to be furnished to the Commission pursuant to the Exchange Act and the rules thereunder and include a certification that, under penalty of law, the compliance report is accurate and complete.

Additionally, the compliance report would be required to: (i) Be submitted to the board of directors and audit committee (or equivalent bodies) of the clearing agency promptly after the date of execution of the required certification and prior to filing of the report with the Commission, (ii) be filed with the Commission in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual as described in Rule 301 of Regulation S–T, and (iii) be filed with the Commission within 60 days after the end of the fiscal year covered by such report.

B. Proposed Use of Information

1. Standards for Clearing Agencies

a. Measurement and Management of Credit Exposures

As discussed above, proposed Rule 17Ad–22(b)(1) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once each day, and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. The purpose of the collection of information is to enable the clearing agency to monitor and limit its exposures to its participants.

b. Margin Requirements

As discussed above, proposed Rule 17Ad–22(b)(2) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) Use margin requirements to limit its credit exposures to participants in normal market conditions; (ii) use risk-based models and parameters to set margin requirements; and (iii) review the models and parameters at least monthly. The purpose of the collection of information is to enable the clearing agency to maintain sufficient collateral or margin.

c. Financial Resources

As discussed above, proposed Rule 17Ad–22(b)(3) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions, and if the clearing agency provides CCP services for security-based swaps then a default by the two participants to which it has the largest exposures in extreme but

plausible market conditions; provided that if a participant controls another participant or is under common control with another participant, the affiliated participant and the participant shall be deemed to be a single participant. The purpose of the collection of information is to enable the clearing agency to satisfy all of its settlement obligations in the event of a participant default.

d. Model Validation

As discussed above, proposed Rule 17Ad–22(b)(4) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation. The purpose of the collection of information is to enable the clearing agency to obtain an assessment of its margin model by a qualified, independent person.

e. Non-Dealer Access

As discussed above, proposed Rule 17Ad–22(b)(5) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons. The purpose of the collection of information is to enable more market participants to obtain indirect access to clearing agencies.

f. Portfolio Size and Transaction Volume Restrictions

As discussed above, proposed Rule 17Ad–22(b)(6) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume. The purpose of the collection of information is to remove unnecessary barriers to participation in clearing agencies that provide CCP services.

g. Net Capital Restrictions

As discussed above, proposed Rule 17Ad–22(b)(7) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency. The rule also permits a clearing agency to provide for a higher net capital requirement (*i.e.,* higher than $50 million) as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures, such as scalable limitations on the transactions that the participants may clear through the clearing agency, and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application. The purpose of the collection of information is to remove unnecessary barriers to clearing access by market participants with a net capital level above $50 million, while at the same time facilitating sound risk management practices by clearing agencies by encouraging them to examine and articulate the benefits that higher net capital requirements would create through having clearing agencies develop scalable membership standards that links the activities any participants could potentially engage in with the potential risks posed by the participant.

h. Record of Financial Resources

As discussed above, proposed Rule 17Ad–22(c)(1) would require that each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a clearing agency that performs CCP services shall calculate and maintain a record of the financial resources necessary to meet the requirement in proposed Rule 17Ad–22c)(3) and sufficient documentation to explain the methodology it uses to compute such financial resource requirement. The purpose of the collection of information is to enable the Commission to monitor the financial resources of clearing agencies that provide CCP services.

i. Annual Audited Financial Report

As discussed above, proposed Rule 17Ad–22(c)(2) would require a clearing agency that provides CCP services to post on its Web site an annual audited financial report that must (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years and be prepared in accordance with U.S. GAAP, except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country the financial statements may be prepared according to U.S. GAAP or IFRS; (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with rule 2–01 of Regulation S–X (17 CFR 210.2–01); and (iii) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02). The purpose of the collection of information is to enable the Commission to monitor the financial resources of clearing agencies that provide CCP services.

j. Transparent and Enforceable Rules and Procedures

As discussed above, proposed Rule 17Ad–22(d)(1) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well founded, transparent, and enforceable legal framework for each aspect of their activities in all relevant jurisdictions. The purpose of the collection of information is to help ensure that clearing agencies' policies and procedures do not cause confusion or legal uncertainty among their participants because they are unclear, incomplete or conflict with other applicable laws or judicial precedent.

k. Participation Requirements

As discussed above, proposed Rule 17Ad–22(d)(2) has three principle requirements related to establishing, implementing, maintaining and enforcing written policies and procedures for participation requirements. First, it would require clearing agencies to require participants to have sufficient financial resources and robust operational capacity to meet their obligations. The purpose of the collection of information is to enable clearing agencies to ensure that only persons with sufficient financial and operational capacity are direct participants. Second, clearing agencies would be required to have procedures in place to monitor that participation requirements are met on an ongoing basis. The purpose of the collection of information is to help clearing agencies identify a participant experiencing financial difficulties before the participant fails to meet its settlement obligations. Third, a clearing agency's participation requirements would have to be objective, publicly disclosed, and permit fair and open access. The purpose of the collection of information is to ensure that all qualified persons

can access a clearing agency's services on an equivalent basis.

l. Custody of Assets and Investment Risk

As discussed above, proposed Rule 17Ad–22(d)(3) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or delay in access to them, and to invest assets in instruments with minimal credit, market, and liquidity risks. The purpose of the collection of information is to enable clearing agencies to access their financial resources quickly so that they settle securities transactions on time and at the agreed upon terms.

m. Identification and Mitigation of Operational Risk

As discussed above, proposed Rule 17Ad–22(d)(4): Would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) Identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; (ii) implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and (iii) have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. The purpose of the collection of information is to ensure that clearing agencies can maintain operations in the event of an operational problem, natural disaster or other similar event.

n. Money Settlement Risks

As discussed above, proposed Rule 17Ad–22(d)(5) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants, and require funds transfers to the clearing agency to be final when effected. The purpose of the collection of information is to promote reliability in a clearing agency's settlement operations.

o. Cost-Effectiveness

As discussed above, proposed Rule 17Ad–22(d)(6) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations. The purpose of the collection of information is to help ensure that the services of clearing agencies do not become too expensive.

p. Links

As discussed above, proposed Rule 17Ad–22(d)(7) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear trades, and ensure that the risks are managed prudently on an ongoing basis. The purpose of the collection of information is to help ensure that clearing agencies adequately assess the risks associated with establishing a link with another clearing organization.

q. Governance

As discussed above, proposed Rule 17Ad–22(d)(8) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies; to support the objectives of owners and participants; and to promote the effectiveness of the clearing agency's risk management procedures. The purpose of the collection of information is to promote boards of directors that exercise sufficient oversight of the clearing agency's management and appropriately represent the interests of relevant stakeholders.

r. Information on Services

As discussed above, proposed Rule 17Ad–22(d)(9) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using their services. The purpose of the collection of information is to help market participants identify the risks and costs associated with using the clearing agency and would allow market participants to make informed decisions about the use of the clearing agency and take appropriate actions to mitigate their risks and costs associated with the use of the clearing agency.

s. Immobilization and Dematerialization of Stock Certificates

As discussed above, proposed Rule 17Ad–22(d)(10) would require clearing agencies that perform central securities depository services to establish, implement, maintain and enforce written policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible. The purpose of the collection of information is to enable clearing agencies to promote greater efficiency in the settlement of securities transactions and reduce risk by transferring securities by book entry movements.

t. Default Procedures

As discussed above, proposed Rule 17Ad–22(d)(11) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of their default procedures publicly available and to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. The purpose of the collection of information is to foster a greater understanding by market participants of possible steps a clearing agency may take when a participant defaults and possibly reduce the likelihood of market participants taking actions based on incorrect information.

u. Timing of Settlement Finality

As discussed above, proposed Rule 17Ad–22(d)(12) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and require that intraday or real-time finality be provided where necessary to reduce risks. The purpose of the proposed rule is to promote consistent standards of timing and reliability in the settlement process.

v. Delivery Versus Payment

As discussed above, proposed Rule 17Ad–22(d)(13) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment. The purpose of the proposed rule is to eliminate principal risk in the transfer of securities and funds.

w. Risk Controls To Address Participant's Failure To Settle

As discussed above, proposed Rule 17Ad–22(d)(14) would require clearing agencies that perform central securities depository services and extend intraday credit to participants to establish, implement, maintain and enforce written policies and procedures reasonably designed to institute risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant fully, and ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle. The purpose of the collection of information is to enable clearing agencies to satisfy their settlement obligations on time and for the agreed upon terms.

x. Identification and Management of Physical Delivery Risks

As discussed above, proposed Rule 17Ad–22(d)(15) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to their participants the clearing agency's obligations with respect to physical deliveries and to identify and manage the risks that arise in connection with these obligations. The purpose of the collection of information is to provide the clearing agency's participants with sufficient information to evaluate the risks and costs associated with participation in the clearing agency.

2. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

As discussed above, proposed Rule 17Aj–1 would require security-based swap clearing agencies that perform CCP services to make available to the public all end-of-day settlement prices and any other prices with respect to security-based swaps that it may use to calculate mark-to-market margin requirements for its participants and any other pricing or valuation information with respect to security-based swaps that it otherwise publishes or makes available to its participants. The purpose of the collection of information is to help improve fairness, efficiency and market competition by providing market participants and, more generally, the public with a source of pricing data on security-based swaps that may otherwise be difficult to obtain.

3. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

As discussed above, proposed Rule 17Ad–23 would require each registered clearing agency to establish, implement, maintain and enforce written policies and procedures designed to protect the confidentiality of any and all transaction information that the clearing agency receives. Such transaction information may include, but is not limited to, trade data, position data, and any non-public personal information about a clearing agency member or participant or any of its members or participant's customers. The proposed rule also provides that the required policies and procedures shall include, but are not limited to: (a) Limiting access to confidential trading information of clearing members to those employees of the clearing agency who are operating the system or responsible for its compliance with any other applicable laws or rules and (b) standards controlling employees and agents of the clearing agency trading for their personal benefit or the benefit of others. The purpose of the collection of information is to foster confidence in clearing agencies by market participants.

4. Clearing Agency Procedures To Identify and Address Conflicts of Interest

As discussed above, proposed Rule 17Ad–25 would require each registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest and that are reasonably designed to minimize conflicts of interest in decision-making at the clearing agency. The purpose of the collection of information is to enable the Commission to examine and evaluate a clearing agency's efforts to minimize conflicts and help to ensure the transparent, equitable operation of the clearing agency.

5. Standards for Board or Board Committee Directors

As discussed above, proposed Rule 17Ad–26 would require that a registered clearing agency establish certain governance standards applicable to its board or board committee members. The proposed collection of information is to help improve the effectiveness of a clearing agency's board of directors.

6. Designation of Chief Compliance Officer

As discussed above, proposed Rule 3Cj–1 would require each registered clearing agency to designate a CCO who would establish and oversee the implementation of certain policies and procedures relating to non-compliance issues, as well as prepare, sign and submit an annual compliance report. The proposed collection of information should promote better compliance by clearing agencies with all applicable laws, regulations and policies.

C. Respondents

1. Standards in Proposed Rule 17Ad–22(b) That Impose a PRA Burden

The standards in proposed Rule 17Ad–22(b) that the Commission preliminarily believes impose a PRA burden are 17Ad–22(b)(1), (2), (3), (4), (5), (6) and (7). The requirements in proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6) and (7) would apply to all clearing agencies that perform central counterparty services. There are currently four clearing agencies authorized to provide CCP services for security-based swap transactions pursuant to the CDS Clearing Exemption Orders.[123] The Commission estimates, based on staff discussions with industry representatives, that there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[124] The Commission is using the higher estimate of six security-based swap clearing agencies for this PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission,[125] of which only three are currently performing central counterparty services. Thus, for these provisions, the Commission estimates that there would be nine respondents.[126]

[123] *See supra* note 6.

[124] The Commission preliminarily believes that there is a potential for new security-based swap clearing agencies to form but does not expect there to be a large number based on the significant level of capital and other financial resources needed for the formation of a clearing agency.

[125] There are four clearing agencies with active operations currently registered with the Commission, plus seven registered clearing agencies that are inactive. Although the inactive entities may not be acting as clearing agencies, for purposes of the PRA the Commission is estimating 11 total clearing agencies.

[126] This figure was calculated as follows: 6 clearing agencies providing CCP services for security-based swaps + 3 registered clearing agencies providing CCP services = 9 respondent clearing agencies.

2. Standards in Proposed Rule 17Ad–22(c) That Impose a PRA Burden

The standards in proposed Rule 17Ad–22(c) that the Commission preliminarily believes impose a PRA burden are 17Ad–22(c)(1) and (2). The requirements of proposed Rule 17Ad–22(c)(1) would apply to all clearing agencies that perform CCP services. As noted above, there are currently four clearing agencies authorized to provide CCP services for security-based swap transactions pursuant to the CDS Clearing Exemption Orders,[127] and there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[128] The Commission is using the higher estimate of six respondent clearing agencies for this PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission,[129] of which only three are currently performing central counterparty services. Thus, for proposed Rule 17Ad–22(c)(1), the Commission estimates that there would be nine respondents.[130]

The requirements of proposed Rule 17Ad–22(c)(2) would apply to all clearing agencies. Therefore, the Commission preliminarily believes that these PRA burdens would be imposed on all clearing agencies registered with the Commission. As noted above, there are currently four clearing agencies authorized to clear security-based swaps pursuant to the CDS Clearing Exemption Orders.[131] The Commission estimates, based on staff discussions with industry representatives, that there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[132] The Commission is using the higher estimate of six for the PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission.[133] Thus, for proposed Rule 17Ad–22(c)(2), the Commission estimates that there would be seventeen respondents.[134]

[127] *See supra* note 6.

[128] *See supra* note 124 and accompanying text.

[129] *See supra* note 125.

[130] *See supra* note 126.

[131] *See supra* note 6.

[132] *See supra* note 124 and accompanying text.

[133] *See supra* note 125.

[134] This figure was calculated as follows: 6 clearing agencies providing CCP services for security-based swaps + 11 additional registered clearing agencies = 17 respondent clearing agencies.

3. Standards in Proposed Rule 17Ad–22(d) That Impose a PRA Burden

In proposed Rule 17Ad–22(d), the requirements that the Commission preliminarily believes impose a PRA burden are 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15). The Commission preliminarily believes that these PRA burdens would be imposed on all clearing agencies registered with the Commission. As noted above, there are currently four clearing agencies authorized to clear security-based swaps pursuant to the CDS Clearing Exemption Orders.[135] The Commission estimates based on staff discussions with industry representatives, that there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[136] The Commission is using the higher estimate of six for the PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission.[137] Thus, for these provisions, the Commission estimates that there would be seventeen respondents.[138]

4. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

The requirements of proposed Rule 17Aj–1 to disseminate pricing and valuation information with respect to security-based swaps would apply to every security-based swap clearing agency that performs CCP services. As noted above, there are currently four entities providing CCP services for security-based swaps that are authorized to do so pursuant to the CDS Clearing Exemption Orders,[139] and there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies that provide CCP services may seek to clear security-based swaps.[140] The Commission is using the higher estimate of six respondent clearing agencies for this PRA analysis.

[135] *See supra* note 6.

[136] *See supra* note 124.

[137] *See supra* note 125.

[138] *See supra* note 134.

[139] *See supra* note 6.

[140] *See supra* note 124 and accompanying text.

5. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

The safeguards and procedures applicable to the confidential treatment of trading information received by a clearing agency under proposed Rule 17Ad–23 would apply to all clearing agencies registered with the Commission. As noted above, there are currently four clearing agencies authorized to clear security-based swaps pursuant to the CDS Clearing Exemption Orders,[141] and there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[142] The Commission is using the higher estimate of six respondent clearing agencies for this PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission.[143] Thus, for this provision, the Commission estimates that there would be seventeen respondents.[144]

6. Clearing Agency Procedures To Identify and Address Conflicts of Interest

The conflicts of interest policies and procedures to be adopted by clearing agencies pursuant to proposed Rule 17Ad–25 would apply to all clearing agencies registered with the Commission. As noted above, there are currently four clearing agencies authorized to clear security-based swaps pursuant to the CDS Clearing Exemption Orders,[145] and that there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[146] The Commission is using the higher estimate of six respondent clearing agencies for this PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission.[147] Thus, for this provision, the Commission estimates that there would be seventeen respondents.[148]

7. Standards for Board or Board Committee Directors

The board and board committee directors governance standards to be

[141] *See supra* note 6.

[142] *See supra* note 124 and accompanying text.

[143] *See supra* note 125.

[144] *See supra* note 134.

[145] *See supra* note 6.

[146] *See supra* note 124 and accompanying text.

[147] *See supra* note 125.

[148] *See supra* note 134.

established by clearing agencies pursuant to proposed Rule 17Ad–26 would apply to all clearing agencies registered with the Commission. As noted above, there are currently four clearing agencies authorized to clear security-based swaps pursuant to the CDS Clearing Exemption Orders,[149] and there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[150] The Commission is using the higher estimate of six respondent clearing agencies for this PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission.[151] Thus, for this provision, the Commission estimates that there would be seventeen respondents.[152]

8. Designation of Chief Compliance Officer

The provisions regarding CCOs of proposed Rule 3Cj–1 would apply to all clearing agencies registered with the Commission. As noted above, there are currently four clearing agencies authorized to clear security-based swaps pursuant to the CDS Clearing Exemption Orders,[153] and there could conceivably be one or two more entities that clear security-based swaps in the future. Thus, the Commission estimates that four to six clearing agencies may seek to clear security-based swaps.[154] The Commission is using the higher estimate of six respondent clearing agencies for this PRA analysis. There are also eleven additional clearing agencies currently registered with the Commission.[155] Thus, for this provision, the Commission estimates that there would be seventeen respondents.[156]

D. Total Annual Reporting and Recordkeeping Burden

1. Standards for Clearing Agencies Reporting Requirements

a. Measurement and Management of Credit Exposures

Proposed Rule 17Ad–22(b)(1) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories ("SDRs").[157] Specifically, Rule 611 of Regulation NMS, referred to as the "Order Protection Rule", requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks, unless an exception applies.[158] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes the requirement for policies and procedures to be created and maintained by SRO and non-SRO trading centers in Rule 611 of Regulation NMS is similar in nature and scope to this requirement for clearing agencies to create policies and procedures.

Accordingly, the Commission believes that the burdens imposed on respondents to create policies and procedures in both contexts would be roughly equivalent. In its adoption of the final Order Protection Rule, the Commission estimated the approximate hourly burdens imposed on trading centers that are SROs and on trading centers that are not SROs to establish written policies and procedures that are reasonably designed to prevent execution of trade-throughs. For SRO trading centers, the Commission estimated that creating written policies and procedures would require approximately 270 hours and require efforts from the various skill sets of the clearing agency's legal, compliance, information technology and business operations personnel. For non-SRO trading centers, the Commission estimated an approximate hourly burden of 210 hours to meet the same requirement. This difference between the hourly burden imposed on non-SRO trading centers and SRO trading centers is primarily due to a slightly lower expectation for the hourly burden imposed on the legal and compliance staff at a non-SRO trading center.

The Commission preliminarily believes that this hourly burden estimate of 210 hours for non-SRO trading centers under Regulation NMS is an appropriate estimate for the burden that would be imposed on clearing agencies to create policies and procedures because, as discussed below, recent assessments of the registered U.S. clearing agencies support the conclusion that clearing agencies and their rule books generally meet or exceed analogous standards of operation and governance to those standards within proposed Rule 17Ad–22.[159] Therefore, those findings and the Commission's experience in oversight of clearing agencies support a preliminary view that the requirements in the rules for clearing agencies proposed by the Commission would in many cases impose a burden on legal and compliance personnel at clearing agencies that would involve adjustments to a registered clearing agency's rule book and its policies and procedures rather than creation of entirely separate policies and procedures to support entirely new operations and practices.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(1) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[160] The

[149] *See supra* note 6.

[150] *See supra* note 124 and accompanying text.

[151] *See supra* note 125.

[152] *See supra* note 134.

[153] *See supra* note 6.

[154] *See supra* note 124 and accompanying text.

[155] *See supra* note 125.

[156] *See supra* note 134.

[157] *See* Exchange Act Release Nos. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (discussing in Section VIII.A.4. the time needed from legal, compliance, information technology and business operations personnel to create policies and procedures for preventing and monitoring trade-throughs) and 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (discussing in Section V.D.7. the time needed for SDRs to establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest).

[158] *See* 17 CFR 242.611.

[159] *See* infra note 291.

[160] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See* Exchange Act Release Nos. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Section VIII.A.4. finding a burden of 210 hours needed for non-SRO trading centers to create one policy and procedure) and 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (Section V.D.7. finding a burden of 210 hours needed for an SDR to create one policy and procedure).

Continued

Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies that provide CCP services would be required to measure their credit exposures as required by proposed Rule 17Ad–22(b)(1) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring custody and investment standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[161] The Commission solicits comment regarding the accuracy of this estimate.

b. Margin Requirements

Proposed Rule 17Ad–22(b)(2) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants in normal market conditions and use risk-based models and parameters to set margin requirements and review them at least monthly. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[162] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(2) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[163] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their custody and investment standards required by proposed Rule 17Ad–22(b)(2) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring custody and investment standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[164] The Commission solicits comment regarding the accuracy of this estimate.

c. Financial Resources

Proposed Rule 17Ad–22(b)(3) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions, and if the clearing agency provides CCP services for security-based swaps then a default by the two participants to which it has the largest exposures in extreme but plausible market conditions; provided that if a participant controls another participant or is under common control with another participant, the affiliated participant and the participant shall be deemed to be a single participant. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[165] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(3) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[166] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their financial resources standards required by proposed Rule 17Ad–22(b)(3) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for financial resources standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing

The Commission based these estimates on the estimates for non-SRO trading centers that appear in Exchange Act Release Nos. 51808 and 63347 because the Commission preliminarily believes that the existing clearing agency requirements under Section 17A of the Exchange Act make these proposed burdens more similar to the less burdensome requirements for non-SRO trading centers than the burdens for SRO trading centers.

[161] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See* Exchange Act Release Nos. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Section VIII.A.4. estimating that it would take the average SRO and non-SRO trading center approximately two hours per month of internal legal time and three hours of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance amounting to an annual burden of 60 hours per year per respondent) and 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (Section V.D.7. estimating the time needed for SDRs to establish and enforce written policies and procedures).

[162] *See supra* note 157.

[163] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See supra* note 160.

[164] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

[165] *See supra* note 157.

[166] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See supra* note 160.

agencies of 540 hours.[167] The Commission solicits comment regarding the accuracy of this estimate.

d. Model Validation

As discussed above, proposed Rule 17Ad–22(b)(4) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation. The Commission preliminarily believes this requirement would help to ensure that a clearing agency's margin model remains effective in determining the appropriate margin level. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[168] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(4) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[169] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their model validation standards required by proposed Rule 17Ad–22(b)(4) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for model validation standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[170] The Commission solicits comment regarding the accuracy of this estimate.

Based on its oversight of clearing agencies, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(4) would impose an annual burden on all respondent clearing agencies of 6,480 hours.[171] The Commission solicits comment regarding the accuracy of this estimate.

e. Non-Dealer Access

Proposed Rule 17Ad–22(b)(5) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons. The exact nature of the procedures a clearing agency would establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[172] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(5) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[173] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their membership standards required by proposed Rule 17Ad–22(b)(5) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for granting membership to persons that do not perform any dealer or security-based swap dealer services would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[174] The Commission solicits comment regarding the accuracy of this estimate.

f. Portfolio Size and Transaction Volume Thresholds Restrictions

Proposed Rule 17Ad–22(b)(6) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume. The exact nature of the procedures a clearing agency would establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[175] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the

[167] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

[168] *See supra* note 157.

[169] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See supra* note 160.

[170] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

[171] This figure was calculated as follows: Consultant at 30 hours per week × 12 weeks × 2 Consultants × 9 respondent clearing agencies = 6,480 hours.

[172] *See supra* note 157.

[173] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See supra* note 160.

[174] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

[175] *See supra* note 157.

corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(6) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[176] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their membership standards required by proposed Rule 17Ad–22(b)(6) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for not having membership standards that require participants to maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[177] The Commission solicits comment regarding the accuracy of this estimate.

g. Net Capital Requirements

Proposed Rule 17Ad–22(b)(7) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains a net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency. The exact nature of the procedures a clearing agency would establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[178] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(7) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[179] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies may need to update these policies and procedures over time, particularly due to the fact that proposed Rule 17Ad–22(b)(7) permits a clearing agency to provide for a higher net capital requirement (*i.e.,* higher than $50 million) as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures, such as scalable limitations on the transactions that the participants may clear through the clearing agency, and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application. While the number of times each clearing agency will need to update its policies and procedures to revise its net capital requirements is likely to vary, both over time and between clearing agencies, such changes may occur as a result of an annual review of a clearing agency's operations and default mechanisms. For the same reasons as discussed above, the Commission believes that the estimates of the burden imposed by the policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories[180] are sufficiently similar to serve as a basis for these estimates. Accordingly, the Commission preliminarily estimates that proposed Rule 17Ad–22(b)(7) would impose an annual burden on each respondent clearing agency of 210 hours, corresponding to an aggregate annual burden on all respondent clearing agencies of 1,890 hours.[181] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies that provide CCP services would be required to administer their net capital requirements required by proposed Rule 17Ad–22(b)(7) on an ongoing basis. The Commission expects that the exact burden of administering the net capital requirements would vary depending on how frequently each clearing agency providing CCP services may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[182] The Commission solicits comment regarding the accuracy of this estimate.

h. Record of Financial Resources

As detailed above, pursuant to proposed Rule 17Ad–22(c)(1), clearing agencies that perform central counterparty services would be required each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, to calculate and maintain a record of the financial resources necessary to meet the requirement in proposed Rule 17Ad–22(c)(1) and sufficient documentation to explain the methodology it uses to compute such financial resource requirement.

The exact nature of the procedures a clearing agency would establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation

[176] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See supra* note 160.

[177] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

[178] *See supra* note 157.

[179] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × nine respondent clearing agencies = 1,890 hours. *See supra* note 160.

[180] *See supra* note 157.

[181] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × nine respondent clearing agencies = 1,890 hours. *See supra* note 160.

[182] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

NMS and in proposed requirements for security-based swap data repositories.[183] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(c)(1) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 1,890 hours.[184] The Commission solicits comment regarding the accuracy of this estimate.

Based on its oversight of clearing agencies, the Commission believes that the respondent clearing agencies already have methodologies designed to ensure that in providing CCP services the clearing agency can withstand a default by the participant to which the clearing agency has the largest exposure in extreme but plausible market conditions.[185] Because clearing agencies that provide CCP services already use such methodologies, the Commission preliminarily believes the one-time burden imposed would involve adjustments needed to synthesize and format existing information in a manner sufficient to explain the methodology the clearing agency uses to meet the requirement of proposed Rule 17Ad–22(c)(1). The Commission preliminarily believes these adjustments would impose a one-time burden of 100 hours on each clearing agency, corresponding to an aggregate one-time burden imposed on all clearing agencies of 900 hours.[186] The Commission solicits comment regarding the accuracy of this estimate.

On an ongoing basis, the Commission estimates that for a clearing agency to generate the required reports concerning its financial resources would impose a burden of three hours per respondent clearing agency per quarter. This amounts to an annual burden of 12 hours for each clearing agency and corresponds to an aggregate annual burden of 108 hours for all respondent clearing agencies.[187] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies providing CCP services would also be required to administer any procedures used to support compliance with Rule 17Ad–22(c)(1) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for granting membership to persons that do not perform any dealer or security-based swap dealer services would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 540 hours.[188] The Commission solicits comment regarding the accuracy of this estimate.

i. Annual Audited Financial Report

Proposed Rule 17Ad–22(c)(2) would also require that a clearing agency post on its Web site an annual financial report. Each financial report shall (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years and be prepared in accordance with U.S. GAAP, except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country the financial statements may be prepared according to U.S. GAAP or IFRS; (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X; and (iii) include report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X.

The exact nature of the procedures a clearing agency would establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[189] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(c)(2) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[190] The Commission solicits comment regarding the accuracy of this estimate.

The Commission preliminarily believes, based on its oversight of clearing agencies, that the one-time burden imposed by the rule would involve systems adjustments at the clearing agency needed to facilitate posting of the annual audited financial report to the clearing agency's Web site. The Commission preliminarily believes these adjustments would impose a one-time burden of 100 hours on each clearing agency, corresponding to an aggregate one-time burden imposed on

[183] *See supra* note 157.

[184] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 9 respondent clearing agencies = 1,890 hours. *See supra* note 160.

[185] *See, e.g.,* International Monetary Fund, *Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the National Securities Clearing Corporation's Observance of the CPSS–IOSCO Recommendations for Central Counterparties,* 10 (2010) (assessing National Securities Clearing Corporation's observance of Recommendation 5 from the RCCP that a CCP should maintain sufficient financial resources to withstand, at a minimum, the default of a participant to which it has the largest exposure in extreme but plausible market conditions and noting that NSCC began evaluating itself against this standard in 2009 and has back-testing results to support that during the period from January through April 2009 there was sufficient liquidity to cover the needs of the failure of the largest affiliated family 99.98 percent of the time), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10129.pdf.*

[186] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) = 100 hours × 9 respondent clearing agencies = 900 hours. *See infra* note 253 and accompanying text.

[187] This figure was calculated as follows: ((Compliance Attorney at 1 hour) + (Computer Operations Department Manager at 2 hours)) = 3 hours per quarter × 4 quarters per year = 12 hours per year × 9 respondent clearing agencies = 108 hours.

[188] This figure was calculated as follows: Compliance Attorney at 60 hours × 9 respondent clearing agencies = 540 hours for all respondent clearing agencies. *See supra* note 161.

[189] *See supra* note 157.

[190] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 160.

all clearing agencies of 1,700 hours.[191] The Commission solicits comment regarding the accuracy of this estimate.

On an ongoing basis, clearing agencies would be required to administer any policies and procedures used to support compliance with Rule 17Ad–22(c)(2). The Commission expects that the exact burden of administering the procedures for facilitating an annual audit report of the clearing agency and posting that annual audit report to the clearing agency's Web site would vary. However, based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[192] The Commission solicits comment regarding the accuracy of this estimate.

The Commission estimates based on its experience with entities of similar size to the respondents to this collection, that these reports would generally require on average 500 hours annually per respondent clearing agency to generate and cost $500,000 for independent public accounting services. Thus, the Commission preliminarily believes this corresponds to an aggregate annual burden to all clearing agencies of 8,500 hours and $8,500,000.[193] The Commission solicits comment as to the accuracy of this estimate.

j. Transparent and Enforceable Rules and Procedures

Proposed Rule 17Ad–22(d)(1) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well founded, transparent and enforceable legal framework. The exact nature of the policies and procedures a clearing agency would establish is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for SDRs.[194] Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(1) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[195] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their rules and procedures to ensure they provide for a well founded, transparent and enforceable legal framework on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring participation standards would vary depending on how frequently each clearing agency may need to update its rules and procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[196] The Commission solicits comment regarding the accuracy of this estimate.

k. Participation Requirements

Proposed Rule 17Ad–22(d)(2) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have procedures in place to monitor that their participation requirements are met on an ongoing basis. The exact nature of the procedures a clearing agency would establish is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[197] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(2) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[198] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their participation requirements required by proposed Rule 17Ad–22(d)(2) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring participation requirements would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[199] The Commission solicits comment regarding the accuracy of this estimate.

Additionally, proposed Rule 17Ad–22(d)(2) would require clearing agencies to publicly disclose their participation requirements. Based on staff discussions with respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders to make publicly available certain pricing and

[191] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) = 100 hours × 9 respondent clearing agencies = 900 hours. *See infra* note 253 and accompanying text.

[192] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 161.

[193] *See* Exchange Act Release No. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (Section VI.F.2. discussing the time the Commission preliminarily estimates an SDR would need to prepare and file annual financial reports with the Commission pursuant to proposed Rule 13n–11(f) and (g)). This figure was calculated as follows: Senior Accountant at 500 hours × 17 respondent clearing agencies = 8,500 hours.

[194] *See supra* note 157.

[195] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours) = 210 hours × 17 respondent clearing agencies = 3,570 hours.

[196] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours.

[197] *See supra* note 157.

[198] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[199] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours. *See supra* note 196.

valuation information for security-based swaps,[200] the Commission estimates that the one-time burden for a security-based swap clearing agency to comply with the requirements of proposed Rule 17Ad–22(d)(2) would involve slight adjustments to computer data systems that would already be in place as part of its clearing agency operations under Exchange Act Section 17A. The Commission preliminarily believes that a similar analysis would apply to each of the other registered clearing agencies. Therefore, the Commission does not anticipate that new hardware, such as additional computer equipment, would be required. Instead, the Commission broadly estimates that a clearing agency's adjustments to its systems to meet the requirements of proposed Rule 17Ad–22(d)(2) would impose a one-time burden of 100 hours on each respondent clearing agency, corresponding to an aggregate one-time burden imposed on all respondent clearing agencies of 1,700 hours.[201] The Commission solicits comment regarding the accuracy of this estimate.

Respondent clearing agencies would also have an ongoing responsibility to make their participation requirements available. Also based on staff discussion with respondents that are already subject to the requirement in the CDS Clearing Exemption Orders to make certain pricing and valuation information publicly available, the Commission preliminarily believes that the ongoing burden would be limited and would likely involve maintenance and troubleshooting of computer systems used to facilitate dissemination of participant requirements. Therefore, the Commission preliminarily estimates this would impose an annual aggregate burden of 60 hours for each respondent clearing agency, which corresponds to an ongoing aggregate annual burden of 1,020 hours for all respondent clearing agencies.[202] The Commission solicits comment regarding the accuracy of this estimate.

l. Identification and Mitigation of Custody of Assets and Investment Risk

Proposed Rule 17Ad–22(d)(3) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or delay in access to them, and to invest assets in instruments with minimal credit, market, and liquidity risks. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[203] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(3) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[204] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their custody and investment standards required by proposed Rule 17Ad–22(d)(3) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring custody and investment standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[205] The Commission solicits comment regarding the accuracy of this estimate.

m. Identification and Mitigation of Operational Risk

Proposed Rule 17Ad–22(d)(4) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and have procedures in place, including business continuity plans, to minimize sources of operational risk. The exact nature of the procedures a clearing agency would establish is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[206] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(4) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[207] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their operational standards required by proposed Rule 17Ad–22(d)(4) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring operational risks would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours

[200] *See infra* notes 251–254 and accompanying text.

[201] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) = 100 hours × 17 respondent clearing agencies = 1,700 hours. *See infra* note 253 and accompanying text.

[202] This figure was calculated as follows: Computer Operations Department Manager at 60 hours annually × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[203] *See supra* note 157.

[204] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[205] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[206] *See supra* note 157.

[207] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[208] The Commission solicits comment regarding the accuracy of this estimate.

n. Money Settlement Risks

Proposed Rule 17Ad–22(d)(5) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants; and require funds transfers to the clearing agency to be final when effected. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[209] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(5) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[210] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their settlement arrangements required by proposed Rule 17Ad–22(d)(5) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring settlement arrangements would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[211] The Commission solicits comment regarding the accuracy of this estimate.

o. Cost-Effectiveness

Proposed Rule 17Ad–22(d)(6) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to be cost effective in meeting the requirements of participants while maintaining safe and secure operations. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[212] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(6) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[213] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their cost-effectiveness standards required by proposed Rule 17Ad–22(d)(6) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring cost-effectiveness standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[214] The Commission solicits comment regarding the accuracy of this estimate.

p. Links

Proposed Rule 17Ad–22(d)(7) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear trades and ensure that the risks are managed prudently on an ongoing basis. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[215] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(7) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time

[208] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[209] *See supra* note 157.

[210] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[211] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[212] *See supra* note 157.

[213] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[214] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[215] *See supra* note 157.

burden on all respondent clearing agencies of 3,570 hours.[216] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their links arrangements as required by proposed Rule 17Ad–22(d)(7) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring links arrangements would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[217] The Commission solicits comment regarding the accuracy of this estimate.

q. Governance

Proposed Rule 17Ad–22(d)(8) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[218] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(8) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[219] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their governance arrangements as required by proposed Rule 17Ad–22(d)(8) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring governance arrangements would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[220] The Commission solicits comment regarding the accuracy of this estimate.

Based on information from respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders to make publicly available certain pricing and valuation information with respect to security-based swaps,[221] the Commission estimates that the one-time burden for a clearing agency to provide transparency about its governance arrangements to fulfill the public interest requirements in Section 17A of the Exchange Act would involve slight adjustments to data systems that would already be in place as part of the clearing agency's operations. Therefore, the Commission does not anticipate that new hardware, such as additional computer equipment, would be required. Instead, the Commission broadly estimates that for a clearing agency to adjust its systems to meet the requirements of proposed Rule 17Ad–22(d)(8) would impose a one-time burden of 100 hours on each respondent clearing agency, corresponding to an aggregate one-time burden imposed on all respondent clearing agencies of 1,700 hours.[222] The Commission solicits comment regarding the accuracy of this estimate.

r. Information on Services

Proposed Rule 17Ad–22(d)(9) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using their services. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[223] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(9) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[224] The Commission solicits comment regarding the accuracy of this estimate.

[216] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[217] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[218] *See supra* note 157.

[219] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[220] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[221] *See infra* notes 251–254 and accompanying text.

[222] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) × 17 respondent clearing agencies = 1,700 hours. *See infra* note 253 and accompanying text.

[223] *See supra* note 157.

[224] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

Respondent clearing agencies would also have an ongoing responsibility to make this information available. Also based on informal comments from respondents already subject to a similar requirement in the CDS Clearing Exemption Orders to make certain pricing and valuation information with respect to security-based swaps publicly available, the Commission preliminarily believes that the ongoing burden would be limited and would likely involve maintenance and troubleshooting of computer systems used to facilitate dissemination of information responsive to Rule 17Ad–22(d)(9). Therefore, the Commission preliminarily estimates this would impose an annual aggregate burden of 60 hours for each respondent clearing agency, which corresponds to an ongoing aggregate annual burden of 1,020 hours for all respondent clearing agencies.[225] The Commission solicits comment regarding the accuracy of this estimate.

Based on information from respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders to make publicly available certain pricing and valuation information with respect to security-based swaps,[226] the Commission estimates that the one-time burden to provide market participants with sufficient information for them to identify and evaluate accurately the risks and costs associated with using a clearing agency's services would involve slight adjustments to data systems that would already be in place as part of the clearing agency's operations under Exchange Act Section 17A. Therefore, the Commission does not anticipate that new hardware, such as additional computer equipment, would be required. Instead, the Commission broadly estimates that for a clearing agency to adjust its systems to meet the requirements of proposed Rule 17Ad–22(d)(9) would impose a one-time burden of 100 hours on each respondent clearing agency, corresponding to an aggregate one-time burden imposed on all respondent clearing agencies of 1,700 hours.[227] The Commission solicits comment regarding the accuracy of this estimate.

s. Immobilization and Dematerialization of Stock Certificates

Proposed Rule 17Ad–22(d)(10) would require clearing agencies that provide central securities depository services to establish, implement, maintain and enforce written policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[228] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17AAd–22d)(10) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[229] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies that provide central securities depository services would be required to administer their standards for immobilizing or dematerializing securities certificates as required by proposed Rule 17AAd–22d)(10) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for immobilizing and dematerializing securities certificates would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1020 hours.[230] The Commission solicits comment regarding the accuracy of this estimate.

t. Default Procedures

Proposed Rule 17AAd–22d)(11) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. The exact nature of the procedures a clearing agency would establish is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[231] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17AAd–22d)(11) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[232]

Clearing agencies would be required to administer their default standards required by proposed Rule 17AAd–22d)(11) on an ongoing basis. The Commission expects that the exact burden of administering the procedures

[225] This figure was calculated as follows: Computer Operations Department Manager at 60 hours annually × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[226] *See infra* notes 251–254 and accompanying text.

[227] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) × 17 respondent clearing agencies = 1,700 hours. *See infra* note 253 and accompanying text.

[228] *See supra* note 157.

[229] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[230] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agency = 1020 hours for all respondent clearing agencies. *See supra* note 196.

[231] *See supra* note 157.

[232] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

for monitoring default standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[233] The Commission solicits comment regarding the accuracy of this estimate.

Based on information from respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders to make publicly available certain pricing and valuation information with respect to security-based swaps,[234] the Commission estimates that the one-time burden for a clearing agency to make key aspects of its default procedures publicly available would involve slight adjustments to data systems that would already be in place as part of the clearing agency's operations under Section 17A of the Exchange Act. Therefore, the Commission does not anticipate that new hardware, such as additional computer equipment, would be required. Instead, the Commission broadly estimates that for a clearing agency to adjust its systems to meet the requirements of proposed Rule 17AAd–22d)(11) would impose a one-time burden of 100 hours on each respondent clearing agency, corresponding to an aggregate one-time burden imposed on all respondent clearing agencies of 1,700 hours.[235] The Commission solicits comment regarding the accuracy of this estimate.

u. Timing of Settlement Finality

Proposed Rule 17Ad–22(d)(12) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and require that intraday or real-time finality be provided where necessary to reduce risks. The exact nature of the procedures a clearing agency would establish is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories. While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(12) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[236]

Clearing agencies would be required to administer their settlement finality standards required by proposed Rule 17Ad–22(d)(12) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for ensuring the timing of settlement finality would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[237] The Commission solicits comment regarding the accuracy of this estimate.

v. Delivery Versus Payment

Proposed Rule 17Ad–22(d)(13) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment. The exact nature of the procedures a clearing agency would establish is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[238] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(13) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[239]

Clearing agencies would be required to administer their delivery versus payment standards required by proposed Rule 17Ad–22(d)(13) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for delivery versus payment would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[240] The Commission solicits comment regarding the accuracy of this estimate.

w. Risk Controls To Address Participants' Failure To Settle

Proposed Rule 17Ad–22(d)(14) would require clearing agencies to establish, implement, maintain and enforce

[233] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours. *See supra* note 196.

[234] *See infra* notes 251–254 and accompanying text.

[235] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) × 17 respondent clearing agencies = 1,700 hours. *See infra* note 253 and accompanying text.

[236] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[237] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours. *See supra* note 196.

[238] *See supra* note 157.

[239] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[240] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours. *See supra* note 196.

written policies and procedures reasonably designed to institute risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant exposure fully, and that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the clearing agency provides central securities depository services and extends intraday credit to participants. The exact nature of any rules and procedures a clearing agency would likely establish to support this requirement is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[241] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(14) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[242] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies that provide central securities depository services would be required to administer their risk control standards required by proposed Rule 17Ad–22(d)(14) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant exposure fully and that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[243] The Commission solicits comment regarding the accuracy of this estimate.

x. Identification and Management of Physical Delivery Risks

Proposed Rule 17Ad–22(d)(15) would require a clearing agency to state to its participants the clearing agency's obligations with respect to physical deliveries and to identify and manage the risks that arise in connection with these obligations. The exact form in which a clearing agency would state to its participants the clearing agency's obligations with respect to physical deliveries and to identify and manage the risks in connection with those obligations is likely to vary between clearing agencies. However, there are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[244] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–22(d)(15) would impose a one-time burden on each respondent clearing agency of 210 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 3,570 hours.[245] The Commission solicits comment regarding the accuracy of this estimate.

Clearing agencies would be required to administer their physical delivery standards required by proposed Rule 17Ad–22(d)(15) on an ongoing basis. The Commission expects that the exact burden of administering the procedures for monitoring physical delivery standards would vary depending on how frequently each clearing agency may need to update its procedures. Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[246] The Commission solicits comment regarding the accuracy of this estimate.

Based on information from respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders to make publicly available certain pricing and valuation information with respect to security-based swaps,[247] the Commission estimates that the one-time burden for a clearing agency to state to its participants its obligations with respect to physical deliveries would involve slight adjustments to data systems that would already be in place as part of the clearing agency's operations under Section 17A of the Exchange Act. Therefore, the Commission does not anticipate that new hardware, such as additional computer equipment, would be required. Instead, the Commission broadly estimates that for a clearing agency to adjust its systems to meet the requirements of proposed Rule 17Ad–22(d)(15) would impose a one-time burden of 100 hours on each respondent clearing agency, corresponding to an aggregate one-time burden imposed on all respondent clearing agencies of 1,700 hours.[248] The Commission solicits comment regarding the accuracy of this estimate.

Total Burden

The Commission preliminarily believes that for all respondent clearing agencies the aggregate paperwork burdens contained in proposed Rules

[241] *See supra* note 157.

[242] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[243] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours for all respondent clearing agencies. *See supra* note 196.

[244] *See supra* note 157.

[245] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[246] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours. *See supra* note 196.

[247] *See infra* notes 251–254 and accompanying text.

[248] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) × 17 respondent clearing agencies = 1,700 hours. *See infra* note 253 and accompanying text.

17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (b)(1), (2), (3), (4), (5), (6), (7), (c)(1) and (2) would impose a one-time burden of 83,343 hours [249] and an ongoing annual burden of 39,658 hours.[250] The Commission solicits comment regarding the accuracy of this estimate.

2. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

The requirement for dissemination of pricing and valuation information in proposed Rule 17Aj–1 would effectively require each of the entities authorized to provide CCP services for security-based swaps pursuant to the CDS Clearing Exemption Orders [251] to continue the information dissemination practices they already perform. These entities generate end of day settlement prices and other model prices for security-based swaps, which can be used to establish margin requirements for participant positions and could provide prices in the event of a default scenario. As outlined above, the Commission estimates a total of six respondents would be subject to this requirement.[252]

Based on information from respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders to disseminate pricing and valuation information, the Commission preliminarily believes that the requirements of proposed Rule 17Aj–1 would impose one-time and ongoing burdens on respondent clearing agencies. For instance, compliance professionals may need to work with information technology and operations professionals to accurately memorialize in writing the specific policy and procedure requirements regarding the dissemination of pricing and valuation information. Information technology personnel may be relied on to develop or modify computer programs that facilitate the requirements of the policies and procedures.

The Commission estimates that the one-time burden for a security-based swap clearing agency to comply with the requirements of proposed Rule 17Aj–1 would involve slight adjustments to data systems that would already be in place as part of the operation of the respondent as a registered clearing agency that provides CCP services for security-based swaps. Therefore, the Commission does not anticipate that new hardware, such as additional computer equipment, would be required. Instead, the Commission broadly estimates that for a clearing agency to adjust its systems to meet the requirements of proposed Rule 17Aj–1 would impose a one-time burden of 100 hours on each respondent clearing agency, corresponding to an aggregate one-time burden imposed on all respondent clearing agencies of 600 hours.[253] The Commission solicits comment regarding the accuracy of this estimate.

Respondent clearing agencies would also have an ongoing responsibility to make their relevant pricing and valuation information available. Based on informal comments from respondents that are already subject to a similar requirement in the CDS Clearing Exemption Orders, the Commission preliminarily believes that the ongoing burden would be limited and would likely involve maintenance and troubleshooting of computer systems used to facilitate dissemination of covered pricing and valuation information. Therefore, the Commission preliminarily estimates this would impose an annual aggregate burden of 60 hours for each respondent clearing agency, which corresponds to an ongoing aggregate annual burden of 360 hours for all respondent clearing agencies.[254] The Commission solicits comment regarding the accuracy of this estimate.

3. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

Proposed Rule 17Ad–23 would require each clearing agency to establish, maintain and enforce written policies and procedures designed to protect the confidentiality of clearing members' trading information. As outlined above, the Commission estimates a total of 17 respondents to this requirement.[255]

Based on the staff's conversations with respondents that are already subject to a similar policies and procedures requirement as part of the CDS Clearing Exemption Orders, the Commission preliminarily believes that establishing, maintaining and enforcing written policies and procedures to protect confidential information of clearing members would require collaboration and coordination across business units within the clearing agency. For instance, legal or compliance professionals may need to work with information technology and operations professionals to accurately memorialize in writing the specific policy and procedure requirements that the clearing agency decides to establish. Information technology personnel may be heavily relied on to develop or modify computer programs that facilitate the requirements of the policies and procedures. Developing business practices that are synchronized with the policies and procedures may also entail coordination with the clearing agency's human resources or risk management personnel to ensure effective adoption of any employee training created to inform employees about trading restrictions or other areas of the policies and procedures that impact them.

The exact nature of the written policies and procedures a clearing agency would establish is likely to vary. However, based on preliminary

[249] This figure combines the one-time burdens for proposed Rules 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (b)(1), (2), (3), (4), (5), (6), (7), (c)(1) and (2) and was calculated as follows: (((3,570 hours × 16 standards pursuant to proposed Rules 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15) and (d)(2) = 57,123 hours) + (1,890 hours × 8 standards pursuant to proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7) and (d)(1) = 15,120 hours) + (1,700 hours × 6 systems adjustments pursuant to Rules 17Ad–22(d)(2), (8), (9), (11), (15), (d)(2) = 10,200 hours) + (900 hours × 1 systems adjustment pursuant to Rule 17Ad–22(c)(1)) = 83,343 hours.

[250] This figure combines the annual burdens for proposed Rules 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (b)(1), (2), (3), (4), (5), (6), (7), (c)(1) and (2) and was calculated as follows: ((1,020 hours × 16 standards to be administered pursuant to Rules 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15) and (d)(2) = 16,320 hours) + (540 hours × 8 standards to be administered pursuant to proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7) and (d)(1) = 4,320 hours) + (1,020 hours × 2 ongoing efforts to maintain and troubleshoot computer systems used to facilitate dissemination of information responsive to Rules 17Ad–22(d)(2) and (9) = 2,040 hours) + (6,480 hours to prepare the annual model validation required pursuant to Rule 17Ad–22(b)(4)) + (1,890 hours to prepare revised policies and procedures providing for a higher net capital requirement pursuant to Rule 17Ad–22(b)(7) + (108 hours to generate the financial information required pursuant to Rule 17Ad–22(c)(1)) + (8,500 hours to coordinate the posting of financial information to the clearing agency's Web site as required pursuant to Rule 17Ad–22(c)(2)) = 39,658 hours.

[251] *See supra* note 6.

[252] *See supra* notes 139–140 and accompanying text. The Commission notes that clearing agencies operating under the existing CDS Clearing Exemption Orders may not need to make additional changes to meet the requirements of the proposed rule because they are already subject to similar conditions as part of the orders. However, for purposes of this PRA analysis the Commission assumes that these would be new requirements.

[253] This figure was calculated as follows: ((Chief Compliance Officer at 40 hours) + (Computer Operations Department Manager at 40 hours) + (Senior Programmer at 20 hours)) = 100 hours × 6 respondent clearing agencies = 600 hours.

[254] This figure was calculated as follows: Computer Operations Department Manager at 60 hours annually × 6 respondent clearing agencies = 360 hours.

[255] *See supra* notes 141–144 and accompanying text.

information from respondents that are affected by similar requirements under the CDS Clearing Exemption Orders and also based on the Commission's experience in administering those orders, the Commission preliminarily believes that the proposed rule would impose a one-time burden on each respondent clearing agency of 610 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 10,370 hours.[256] The Commission solicits comment regarding the accuracy of this estimate.

Also based on information from respondents that have been subject to the CDS Clearing Exemption Orders, the Commission preliminarily believes that a clearing agency would likely purchase computer software from a third party vendor that the clearing agency would then use to implement the aspects of its policies and procedures designed to restrict, as appropriate, the trading of clearing agency employees for their own account and to prevent misuse and misappropriation of participant information protected by the rule. The cost of such computer software is likely to vary according to the specific policies and procedures of the clearing agency (*i.e.,* based on the number of licenses it may need to cover its employees, the types of services it needs the software to provide, *etc.*). However the Commission preliminarily estimates that the rule would impose a one-time cost of approximately $10,000 dollars on each clearing agency, corresponding to an aggregate one-time burden on all clearing agencies of $170,000.[257] The Commission solicits comment regarding the accuracy of this estimate.

The Commission also preliminarily understands from respondents subject to the similar requirement in the CDS Clearing Exemption Orders that monitoring and enforcing the written policies and procedures required by proposed Rule 17Ad–23 would likely require resource commitments from many of the same business units needed to develop such policies and procedures. For instance, as part of the effort to restrict, as appropriate, trading by clearing agency employees for their own accounts and to prevent misuse and misappropriation of information protected by the rule, the Commission preliminarily believes a clearing agency would need to devote fifty percent of the work hours of a full-time, compliance attorney. The Commission preliminarily expects this resource commitment may, among other things, take the form of obtaining and reviewing brokerage statements of clearing agency employees and reviewing their e-mails. Time for employee training related to the requirements of the policies and procedures, troubleshooting any computer systems designed to protect information in connection with the policies and procedures, and amendments to the policies and procedures are also factors that may contribute to the ongoing burden on clearing agencies. Accordingly, the Commission preliminarily estimates the rule would impose an annual aggregate burden on each respondent of 1,128 hours, corresponding to an aggregate annual burden on all clearing agencies of 19,176 hours.[258] The Commission solicits comment regarding the accuracy of this estimate.

4. Clearing Agency Procedures To Identify and Address Conflicts of Interest

Proposed Rule 17Ad–25 would require each clearing agency to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to identify and address existing or potential conflicts of interest and minimize conflicts of interest in the decision-making process of the clearing agency. As outlined above, the Commission estimates a total of 17 respondents to this requirement.[259]

The exact nature of the policies and procedures a clearing agency would establish is likely to vary between clearing agencies. For instance, legal or compliance professionals may need to work to accurately memorialize in writing the specific policy and procedure requirements regarding conflicts of interest. Information technology personnel may be relied on to develop, modify or implement computer programs that facilitate the requirements of the policies and procedures.

There are estimates of the burden imposed by similar policies and procedures requirements in Regulation NMS and in proposed requirements for security-based swap data repositories.[260] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that for PRA purposes there is similarity in the burden to create policies and procedures.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily estimates that proposed Rule 17Ad–25 would impose a one-time burden on each respondent clearing agency of 420 hours, corresponding to an aggregate one-time burden on all respondent clearing agencies of 7,140 hours.[261] Also based on the estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that a burden of $40,000 in initial outside legal costs would be incurred per respondent clearing agency for an aggregate outside cost burden of $680,000 for all clearing agencies.[262] The Commission solicits comment regarding the accuracy of these estimates.

For a clearing agency to monitor, enforce, and potentially adjust its policies and procedures in connection with proposed Rule 17Ad–25, the Commission preliminarily believes these activities would impose an ongoing aggregate annual burden on each respondent clearing agency of 120 hours, corresponding to an aggregate annual ongoing burden for all respondents of 2,040 hours.[263] The Commission solicits comment regarding the accuracy of these estimates.

[256] This figure was calculated as follows: ((Chief Compliance Officer at 210 hours) + (Computer Operations Department Manager at 180 hours) + (Senior Programmer at 180 hours) + (Senior Risk Management Specialist at 40 hours)) = 610 hours × 17 respondent clearing agencies = 10,370 hours.

[257] This figure was calculated as follows: $10,000 dollars in software costs per respondent clearing agency × 17 respondent clearing agencies = $170,000.

[258] This figure was calculated as follows ((Compliance Attorney at 4 hours per business day × 260 business days per year) = 1040 hours per year + (Computer Operations Department Manager at 40 hours per year) + (Senior Programmer at 40 hours per year) + (Senior Risk Management Specialist at 8 hours per year)) = 1,128 hours per year × 17 respondent clearing agencies = 19,176 hours per year.

[259] *See supra* notes 145–148 and accompanying text.

[260] *See supra* note 157.

[261] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours to create one policy and procedure × 2 policies and procedures x 17 respondent clearing agencies = 7,140 hours. *See supra* note 195.

[262] This estimated $680,000 figure has been calculated as follows: $400 per hour cost for outside legal services × 50 hours × 2 policies and procedures × 17 clearing agencies. This is the same estimate used by the Commission for these services in the proposed consolidated audit trail rule. *See* Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

[263] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours to administer one policy and procedure × 2 policies and procedures = 2,040 hours. *See supra* note 196.

5. Standards for Board or Board Committee Directors

Proposed Rule 17Ad–26 outlines the proposed governance standards that clearing agencies would be required to establish for board or board committee directors. As outlined above, the Commission estimates a total of 17 respondents to this requirement.[264]

The exact nature of the policies and procedures a clearing agency would establish is likely to vary between clearing agencies. For instance, legal or compliance professionals may need to work with a law firm to accurately memorialize in writing the specific policy and procedure requirements regarding the selection of directors. However, as noted above in the discussion of the burdens associated with proposed Rule 17Ad–25, there are estimates of similar burdens imposed by policies and procedures requirements in Regulation NMS and in the proposed requirements for security-based swap data repositories.[265] While the requirements underlying those estimates are not identical to this requirement for clearing agencies, the Commission preliminarily believes that there is sufficient similarity between them for PRA purposes that the burden would be roughly equivalent.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories, the Commission preliminarily believes that this rule would impose an aggregate one-time burden on each respondent clearing agency of 210 hours to create the minimum standards required by the rule, corresponding to a one-time aggregate burden for all clearing agencies of 3,570 hours.[266] The Commission solicits comment regarding the accuracy of this estimate.

The Commission also estimates, based on similar requirements and the corresponding burdens in Regulation NMS and for security-based swap data repositories that a total burden of $20,000 in outside legal costs would be incurred by each respondent clearing agency, corresponding to an aggregate cost burden of $340,000 for all respondent clearing agencies.[267] The Commission solicits comment regarding the accuracy of this information.

Clearing agencies would be required to administer their governance standards required by proposed Rule 17Ad–26 on an ongoing basis. The Commission expects that the exact burden of administering the governance standards would vary depending on factors that include, but are not limited to, how frequently a clearing agency elects new board members and how many board and board committee members are involved with the governance of each clearing agency. These factors would influence the time spent evaluating potential new board members as well as the time needed to assess existing board members at least annually for compliance with the standards.

Based on the analogous policies and procedures requirements and the corresponding burden estimates in Regulation NMS and for security-based swap data repositories, the Commission estimates that the ongoing requirements of this rule would impose an aggregate annual burden of 60 hours on each respondent clearing agency, corresponding to an aggregate annual burden for all respondent clearing agencies of 1,020 hours.[268] The Commission solicits comment regarding the accuracy of this information. The proposed rule also encourages clearing agencies to use a third party to facilitate completion of the board's annual assessment of its members against its governance standards. The Commission estimates that using a third party would impose an average annual burden of 20 hours on each respondent clearing agency, corresponding to aggregate of 340 hours all clearing agencies.[269] The Commission solicits comment regarding the accuracy of this estimate.

6. Designation of Chief Compliance Officer

Under proposed Rule 3Cj–1(b), a registered clearing agency's CCO would be responsible for, among other matters, (1) establishing policies and procedures for the remediation of non-compliance issues identified by the CCO and (2) establishing and following appropriate procedures for the handling of management response, remediation, retesting and closing of non-compliance issues. As outlined above, the Commission estimates a total of 17 respondents to this requirement.[270]

The exact nature of the policies and procedures a clearing agency would establish is likely to vary between clearing agencies. However, as noted in the discussion of the estimated burdens for proposed Rules 17Ad–25 and 17Ad–26, there are similarly positioned requirements and corresponding burden estimates in Regulation NMS and in the proposed requirements for security-based swap data repositories.[271] The proposed rule requirements that create the estimated PRA burden for the CCO of a security-based swap data repository[272] are highly-similar to the proposed requirements for the CCO of a clearing agency in Rule 3Cj–1(b).[273] This is because both rules are predicated on statutory provisions of the Exchange Act that contain statutory requirements that mirror one another to a large degree.[274] Therefore, the Commission preliminarily believes that for PRA purposes the burdens would be roughly equivalent.

Consequently, the Commission preliminarily estimates that the two requirements for the CCO of a clearing agency under proposed Rule 3Cj–1 would require 420 hours to create policies and procedures, corresponding to a total burden of 7,140 hours initially.[275] The Commission also preliminarily estimates 120 hours to administer each policy and procedure per year per respondent, corresponding to 1,200 hours on average annually.[276]

[264] *See supra* notes 149–152 and accompanying text.

[265] *See supra* note 157.

[266] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours × 17 respondent clearing agencies = 3,570 hours. *See supra* note 195.

[267] This estimated figure was calculated as follows: ($400 per hour cost for outside legal services × 50 hours) × 17 respondent clearing agencies = $170,000. *See supra* note 262.

[268] This figure was calculated as follows: Compliance Attorney at 60 hours × 17 respondent clearing agencies = 1,020 hours. *See supra* note 196.

[269] This figure was calculated as follows: Consultant at 20 hours × 17 respondent clearing agencies = 340 hours.

[270] *See supra* note 153–156 and accompanying text.

[271] *See supra* note 157.

[272] *See* Exchange Act Release No. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (proposed Rules 13n–11(c)(6),(7) and 13n–11(d), (h). *See generally* Public Law 111–203 § 763(a) (adding Section 3C(n)(6) to the Exchange Act).

[273] *Compare* Public Law 111–203 § 763(a) adding Section 3C(j) to the Exchange Act concerning requirements for the CCO of a clearing agency *with* Public Law 111–203 § 763(a) adding Section 3C(n)(6) concerning requirements for the CCO of an SDR.

[274] *Compare* Public Law 111–203 § 763(a) adding Section 3C(j) to the Exchange Act concerning requirements for the CCO of a clearing agency *with* Public Law 111–203 § 763(a) adding Section 3C(n)(6) concerning requirements for the CCO of an SDR.

[275] This figure was calculated as follows: ((Assistant General Counsel at 87 hours) + (Compliance Attorney at 77 hours) + (Computer Operations Manager at 23 hours) + (Senior Business Analyst at 23 hours)) = 210 hours to create one policy and procedure × 2 policies and procedures × 17 respondent clearing agencies = 7,140 hours. *See supra* note 195.

[276] This figure was calculated as follows: (Compliance Attorney at 60 hours x 17 respondent

Continued

The Commission preliminarily believes that this work will be conducted internally and solicits comments regarding the accuracy of this information. The Commission solicits comment regarding the accuracy of these estimates.

Also, based on the similarly positioned burdens in Regulation NMS and in the proposed requirements for the CCO of a security-based swaps data repository, the Commission preliminarily estimates that a total of $40,000 in initial outside legal costs would be incurred by each respondent clearing agency. This corresponds to an aggregate, one-time outside cost burden of $680,000 for all clearing agencies.[277] The Commission solicits comment regarding the accuracy of this estimate.

The CCO would also be required under proposed Rule 3Cj–1(c) to prepare, sign and submit (to the clearing agency's board of directors and audit committee (or equivalent bodies) and to the Commission) an annual compliance report that contains a description of (i) the compliance of the clearing agency with respect to the Federal securities laws and the rules and regulations thereunder, and (ii) each policy and procedure of the clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency). Based upon the Commission's experience with similar reports, the Commission preliminarily estimates that this would require an average of 54 hours per respondent per year. Thus, the Commission preliminarily estimates an aggregate annual burden of 918 hours on all respondent clearing agencies.[278] Because the report will be submitted by the internal CCO, the Commission preliminarily does not expect any external costs. The Commission solicits comments regarding the accuracy of this estimate.

E. Collection of Information Is Mandatory

1. Standards for Clearing Agencies

a. Measurement and Management of Credit Exposures

The collection of information relating to measuring credit exposures to its participants at least once a day and limiting its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control under proposed Rule 17Ad–22(b)(1) would be mandatory for all clearing agencies that provide CCP services.

b. Margin Requirements

The collection of information relating to using margin requirements to limit credit exposures to participants in normal market conditions and using risk-based models and parameters to set margin requirements and review them at least monthly under proposed Rule 17Ad–22(b)(2) would be mandatory for all clearing agencies that provide CCP services.

c. Financial Resources

The collection of information relating to maintaining sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions, and if the clearing agency provides CCP services for security-based swaps then a default by the two participants to which it has the largest exposures in extreme but plausible market conditions; provided that if a participant controls another participant or is under common control with another participant, then the affiliated participants shall be collectively deemed to be a single participant under proposed Rule 17Ad–22(b)(3) would be mandatory for all clearing agencies that provide CCP services.

d. Model Validation

The collection of information relating to providing for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to a person who performs these functions under proposed Rule 17Ad–22(b)(4) would be mandatory for all clearing agencies that provide CCP services.

e. Non-Dealer Access

The collection of information relating to providing the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons under proposed Rule 17Ad–22(b)(5) would be mandatory for all clearing agencies that provide CCP services.

f. Net Capital Requirements

The collection of information relating to providing the opportunity for a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency; provided, however, that the clearing agency may provide for a higher net capital requirement as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application under proposed Rule 17Ad–22(b)(7) would be mandatory for all clearing agencies that provide CCP services.

g. Record of Financial Resources

The collection of information each fiscal quarter, or at any time upon request by the Commission, relating to the calculation and maintenance of a record of the financial resources necessary to meet the requirements of proposed Rule 17Ad–22(b)(3) under proposed Rule 17Ad–22(c)(1) would be mandatory for all clearing agencies that perform CCP services.

h. Annual Audited Financial Report

The collection of information relating to the annual audited financial report that shall (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years and be prepared in accordance with U.S. GAAP, except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country the financial statements may be prepared according to U.S. GAAP or IFRS; (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01); and (iii) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule

clearing agencies) = 1,020 hours to administer one policy and procedure x 2 policies and procedures = 2,040 hours. *See supra* note 196.

[277] This figure was calculated as follows: (($400 per hour cost for outside legal services × 50 hours) × (2 policies and procedures)) × 17 clearing agencies = $680,000. *See supra* note 262.

[278] This figure is based on the following: ((Compliance Attorney at 50 hours) + (Senior Systems Analyst at 4 hours)) × 17 clearing agencies = 918 hours.

2–02 of Regulation S–X (17 CFR 210.2–02) under proposed Rule 17Ad–22(c)(2) would be mandatory for all clearing agencies.

i. Transparent and Enforceable Rules and Procedures

The collection of information relating to policies and procedures providing for a well founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions under proposed Rule 17Ad–22(d)(1) would be mandatory for all clearing agencies.

j. Participation Requirements

The collection of information relating to requiring participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective, publicly disclosed, and permit fair and open access under proposed Rule 17Ad–22(d)(2) would be mandatory for all clearing agencies.

k. Identification and Mitigation of Custody of Assets and Investment Risk

The collection of information relating to holding assets in a manner whereby risk of loss or of delay in its access to them is minimized; and investing assets in instruments with minimal credit, market and liquidity risks under proposed Rule 17Ad–22(d)(3) would be mandatory for all clearing agencies.

l. Identification and Mitigation of Operational Risk

The collection of information relating to identifying sources of operational risk and minimizing them through the development of appropriate systems, controls, and procedures; implementing systems that are reliable, resilient and secure, and have adequate, scalable capacity; and having business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations under proposed Rule 17Ad–22(d)(4) would be mandatory for all clearing agencies.

m. Money Settlement Risks

The collection of information relating to employing money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants; and requiring funds transfers to the clearing agency to be final when effected under proposed Rule 17Ad–22(d)(5) would be mandatory for all clearing agencies.

n. Cost-Effectiveness

The collection of information relating to being cost-effective in meeting the requirements of participants while maintaining safe and secure operations under proposed Rule 17Ad–22(d)(6) would be mandatory for all clearing agencies.

o. Links

The collection of information relating to evaluating the potential sources of risk for any link arrangements the clearing agency establishes and prudently managing those risks under proposed Rule 17Ad–22(d)(7) would be mandatory for all clearing agencies.

p. Governance

The collection of information relating to having governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures under proposed Rule 17Ad–22(d)(8) would be mandatory for all clearing agencies.

q. Information on Services

The collection of information relating to providing market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services under proposed Rule 17Ad–22(d)(9) would be mandatory for all clearing agencies.

r. Immobilization and Dematerialization of Stock Certificates

The collection of information relating to immobilization and dematerialization of securities certificates and transferring them by book entry to the greatest extent possible under proposed Rule 17Ad–22(d)(10) would be mandatory for all clearing agencies that perform central securities depository services.

s. Default Procedures

The collection of information relating to making key aspects of the clearing agency's default procedures publicly available and establishing default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default under proposed Rule 17Ad–22(d)(11) would be mandatory for all clearing agencies.

t. Risk Controls To Address Participants' Failure To Settle

The collection of information relating to instituting risk controls including collateral requirements and limits to cover the clearing agency's credit exposure to each participant exposure fully, and that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the clearing agency provides central securities depository services and extends intraday credit to participants, provided that if a participant controls another participant or is under common control with another participant then the affiliated participants shall be collectively deemed to be a single participant, under proposed Rule 17Ad–22(d)(14) would be mandatory for all clearing agencies.

u. Identification and Management of Physical Delivery Risks

The collection of information relating to stating to participants the clearing agency's obligations with respect to physical deliveries and identifying and managing the risks from those obligations under proposed Rule 17Ad–22(d)(15) would be mandatory for all clearing agencies.

2. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

The collection of information relating to the dissemination of pricing and valuation information of security-based swaps under proposed Rule 17Aj–1 would be mandatory for all security-based swap clearing agencies that perform CCP services.

3. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

The collection of information relating to the establishment, maintenance and enforcement of written policies and procedures under proposed Rule 17Ad–23 pertaining to the confidentiality of trading information would be mandatory for all clearing agencies.

4. Clearing Agency Procedures To Identify and Address Conflicts of Interest

The collection of information relating to the establishment, implementation, maintenance and enforcement of written policies and procedures reasonably designed to identify and address conflicts of interest under proposed Rule 17Ad–25 would be mandatory for all clearing agencies.

5. Standards for Board or Board Committee Directors

The collection of information relating to board or board committee directors governance standards under proposed Rule 17Ad–26 would be mandatory for all clearing agencies.

6. Designation of Chief Compliance Officer

The collection of information relating to the CCO under proposed Rule 3Cj–1 requirements would be mandatory for all clearing agencies.

F. Confidentiality

1. Standards for Clearing Agencies

a. Measurement and Management of Credit Exposures

The collection of information relating to the measurement and management of credit exposures under proposed Rule 17Ad–22(b)(1) would be provided to the Commission staff but not subject to public availability.

b. Margin Requirements

The collection of information relating to margin requirements under proposed Rule 17Ad–22(b)(2) would be provided to the Commission staff but not subject to public availability.

c. Financial Resources

The collection of information relating to financial resources under proposed Rule 17Ad–22(b)(3) would be provided to the Commission staff but not subject to public availability.

d. Model Validation

The collection of information relating to conducting an annual model validation under proposed Rule 17Ad–22(b)(4) would be provided to the Commission staff but not subject to public availability.

e. Non-Dealer Access

The collection of information relating to non-dealer access under proposed Rule 17Ad–22(b)(5) would be provided to the Commission staff but not subject to public availability.

f. Net Capital Requirements

The collection of information relating to the procedures for net capital requirements under proposed Rule 17Ad–22(b)(7) would be provided to the Commission staff but not subject to public availability.

g. Record of Financial Resources

The collection of information relating to the calculation and maintenance by a clearing agency that provides CCP services of a quarterly report describing the financial resources necessary to meet the requirements of proposed Rule 17Ad–22(b)(3) would be provided to the Commission staff under proposed Rule 17Ad–22(c)(1) but would not be subject to public availability.

h. Annual Audited Financial Report

The collection of information relating to the annual audited financial report published to the clearing agency's Web site under proposed Rule 17Ad–22(c)(2) would be subject to public availability.

i. Transparent and Enforceable Rules and Procedures

The collection of information relating to a clearing agency's well founded, transparent and enforceable legal framework under proposed Rule 17Ad–22(d)(1) would be provided to the Commission staff but not subject to public availability.

j. Participation Requirements

The collection of information relating to the procedures for monitoring and publicly disseminating the participation requirements under proposed Rule 17Ad–22(d)(2) would be provided to the Commission staff and would be subject to public availability.

k. Custody of Assets and Investment Risk

The collection of information relating minimizing custody and investment risk under proposed Rule 17Ad–22(d)(3) would be provided to the Commission staff but not subject to public availability.

l. Identification and Mitigation of Operational Risk

The collection of information relating to identifying and minimizing operational risk under proposed Rule 17Ad–22(d)(4) would be provided to the Commission staff but not subject to public availability.

m. Money Settlement Risks

The collection of information relating to the procedures for money settlement arrangements under proposed Rule 17Ad–22(d)(5) would be provided to the Commission staff but not subject to public availability.

n. Cost-Effectiveness

The collection of information relating to being cost-effective under proposed Rule 17Ad–22(d)(6) would be provided to the Commission staff but not subject to public availability.

o. Links

The collection of information relating to evaluating potential sources of risk in links arrangements under proposed Rule 17Ad–22(d)(7) would be provided to the Commission staff but not subject to public availability.

p. Governance

The collection of information relating to a clearing agency's governance arrangements under proposed Rule 17Ad–22(d)(8) would be provided to the Commission staff but not subject to public availability.

q. Information on Services

The collection of information relating to the provision of sufficient information to market participants under proposed Rule 17Ad–22(d)(9) would be provided to the Commission staff and market participants but not subject to public availability.

r. Immobilization and Dematerialization of Stock Certificates

The collection of information relating to the procedures for immobilizing and dematerializing stock certificates under proposed Rule 17Ad–22(d)(10) would be provided to the Commission staff but not subject to public availability.

s. Default Procedures

The collection of information relating to the establishment and maintenance of default procedures under proposed Rule 17Ad–22(d)(11) would be subject to public availability.

t. Risk Controls To Address Participants' Failure To Settle

The collection of information relating to risk controls to address participants' failure to settle under proposed Rule 17Ad–22(d)(14) would be provided to the Commission staff, but not subject to public availability.

u. Identification and Management of Physical Delivery Risks

The collection of information relating to the statement and management of physical delivery risk under proposed Rule 17Ad–22(d)(15) would be provided to the Commission staff, but not subject to public availability.

2. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

The collection of information relating to the dissemination of pricing and valuation information under proposed Rule 17Aj–1 would be subject to public availability.

3. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

The collection of information pertaining to the establishment, maintenance and enforcement of written policies and procedures pertaining to the confidentiality of trading information under proposed Rule 17Ad–23 would be provided to the Commission staff and would be subject to public availability.

4. Clearing Agency Procedures To Identify and Address Conflicts of Interest

The collection of information relating to the establishment, implementation, maintenance and enforcement of written policies and procedures reasonably designed to identify and address conflicts of interest under proposed Rule 17Ad–25 would be provided to the Commission staff and would be subject to public availability.

5. Standards for Board or Board Committee Directors

The collection of information relating to board or board committee directors governance standards under proposed Rue 17Ad–26 would be provided to the Commission staff and would be subject to public availability.

6. Designation of Chief Compliance Officer

The collection of information relating to the CCO under proposed Rule 3Cj–1 would be provided to the Commission staff and would be subject to public availability.

G. Retention Period of Recordkeeping Requirements

Registered clearing agencies will be required to retain all correspondence and other communications reduced to writing (including comment letters) to and from such clearing agency for a period of not less than five years, the first two years of which are to be in a place immediately available to the Commission staff for inspection and examination, pursuant to the recordkeeping requirements set forth in Rule 17a–1 of the Exchange Act.

H. Request for Comment

The Commission invites comments on all of the above estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission requests comment in order to: (a) Evaluate whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the collection of information; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–8–11. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7–8–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Consideration of Costs and Benefits [279]

The Commission is proposing several new rules that would set standards for the operation and governance of clearing agencies. In part, the Dodd-Frank Act is intended to promote financial stability in the financial system of the United States by improving accountability and transparency.[280] Key aspects of the framework of the Dodd-Frank Act specifically give the Commission authority to regulate security-based swaps [281] and to prescribe regulations containing risk management standards for designated clearing entities that the Commission regulates. In addition to considering these specific concerns in formulating the proposed rules, the Commission believes that designing several of the proposed rules to be applicable to all clearing agencies promotes financial stability by facilitating prompt and accurate clearance and settlement of securities transactions consistent with Section 17A of the Exchange Act while concurrently promoting the Dodd-Frank Act's stated aims of accountability and transparency.

Proposed Rules 17Ad–22 through 17Ad–26 and 3Cj–1 would establish operational standards for registered clearing agencies and require those clearing agencies to adopt written policies and procedures pertaining to, among other matters, the confidential treatment of trading information received by the clearing agency, identifying and addressing conflicts of interest, establishing board governance standards and designating a CCO for the clearing agency. Proposed Rule 17Aj–1 would require the public dissemination of certain pricing and valuation information by clearing agencies that perform CCP services with respect to security-based swaps. Finally, the proposed amendments to existing Rule 17Ab2–1 would modify the temporary registration process for clearing agencies.

The Commission is sensitive to the costs and benefits imposed by its rules and has identified the following costs and benefits. In particular, the discussion below is focused on the costs and benefits flowing from the decisions proposed by the Commission to fulfill the mandates of the Dodd-Frank Act rather than the mandates of the Dodd-Frank Act itself. However, to the extent that the Commission's discretion is aligned to take full advantage of the benefits intended by the Dodd-Frank Act, the two types of benefits are not entirely separable. The Commission requests that commenters provide data and any other information or statistics on which they relied on to reach any conclusions.

A. Standards for Clearing Agencies

The standards set forth under proposed Rule 17Ad–22 build off of the recommendations of the CPSS–IOSCO RSSS and RCCP, adjusted to conform to the U.S. system for clearing agency regulation and to adopt those tailored standards as rule requirements. Included in this proposed rule is the requirement that each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a clearing

[279] The hourly rates use for professionals used throughout this Section VI. Consideration of Costs and Benefits are taken from the Securities Industry and Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[280] *See supra* note 2.

[281] *See supra* note 3.

agency that performs central counterparty services shall calculate and maintain a record of the financial resources necessary to comply with proposed Rule 17Ad–22(b)(3), as well as sufficient documentation to explain the methodology it uses to compute such financial resource requirement.

1. Benefits

The proposed standards are intended to provide benefits to clearing agencies and the markets they serve by promoting implementation of measures that would enhance the safety and efficiency of clearing agencies and reduce systemic risk. Safe and reliable clearing agencies are essential not only for the stability of the securities markets they serve but often also to payment systems, which may be used by a clearing agency or may themselves use a clearing agency to transfer collateral. The safety of securities settlement arrangements and post-trade custody arrangements is also critical to the goal of protecting the assets of investors from claims by creditors of intermediaries and other entities that perform various functions in the operation of the clearing agency.

Permitting persons who do not provide dealer or security-based swap dealer services to become members of a clearing agency, as required under proposed Rule 17Ad–22(b)(5), should foster the development of correspondent clearing arrangements that would allow dealers and security-based swap dealers, who may otherwise not be able to meet reasonable participation standards of a clearing agency, to obtain access to the clearing agency through correspondent clearing arrangements, thereby increasing competition among clearing agencies. The net capital requirements contained in proposed Rule 17Ad–22(b)(7) would help remove an overly burdensome barrier to clearing agency access for market participants with a net capital level of at least $50 million, and promote greater direct access to clearing agencies. Entities that become participants will also benefit from an elimination of fee costs that the entities might otherwise have incurred to gain indirect access to the clearing agency through existing participants with higher levels of net capital. Proposed Rule 17Ad–22(b)(7) also may facilitate greater competition among market participants of varying sizes because smaller market participants may not incur additional cost to clear and settle transactions.

Finally, the standards in proposed Rule 17Ad–22(d) have the potential to mitigate various risks associated with providing clearing agency services by establishing standards to address (1) transparent and enforceable rules and procedures; (2) participation requirements; (3) custody of assets and investment risk; (4) operational risk; (5) money settlement risk; (6) cost-effectiveness; (7) links; (8) governance; (9) information on services; (10) immobilization and dematerialization of stock certificates; (11) default procedures; (12) timing of settlement finality; (13) delivery versus payment; (14) risk controls to address participants' failures to settle; and (15) physical delivery risks. This should help to create a framework for the operation of clearing agencies that would promote sound and efficient practices by the clearing agency. Moreover, standards relating to measurement and management of credit exposures, margin requirements, and financial resources should act as a helpful tool to manage systemic risk as increasing amounts of clearance and settlement activity is centralized within clearing agencies. At the same time, requiring annual evaluations of the performance of the clearing agency's margin models should help to ensure that clearing agencies' margin models perform in a manner that facilitates prompt and accurate clearance and settlement of transactions.

2. Costs

As noted above, the standards contained in proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7), (c)(1), (2), (d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) would impose certain burdens and related costs on respondent clearing agencies. As discussed in section V.D.1., based on policies and procedures requirements for Regulation NMS and security-based swap data repositories and based on staff conversations with industry representatives, the Commission has estimated the burdens and related costs of these requirements for clearing agencies.

The proposed clearing agency standards in proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7), (c)(1), (2), (d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) would require respondent clearing agencies to create policies and procedures. The requirements would impose one-time costs of approximately $26,084,488 in the aggregate for all respondent clearing agencies.[282] The standards contained in proposed Rules 17Ad–22(b)(4), (c)(2), (d)(2), (8), (9), (11) and (15) would also impose one-time costs on clearing agencies that are related to the adjustment of systems. With respect to proposed Rules 17Ad–22(b)(2), (d)(2), (8), (9), (11) and (15), this adjustment would be related to facilitating compliance with requirements to provide information or make information available. Proposed Rule 17Ad–22(b)(4) would require one-time systems adjustments related to the capability to perform an annual model validation. These adjustments would amount to a one-time cost of approximately $4,182,480 in the aggregate for all respondent clearing agencies.[283] Consequently, this results in a total one-time burden imposed by proposed Rule 17Ad–22 of approximately $30,266,968 in the aggregate for all respondent clearing agencies.[284]

The standards contained in Rule 17Ad–22 would also impose ongoing costs on clearing agencies. For example, the proposed clearing agency standards in proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7), (c)(1), (2), (d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (14) and (15) would collectively require respondent clearing agencies to perform certain ongoing monitoring and enforcement activities with respect to the policies and procedures the clearing agency creates in response to the proposed standard. Accordingly, the Commission preliminarily believes that those ongoing activities would impose total annual costs of approximately $6,660,800 in the aggregate for all respondent clearing agencies.[285]

[282] This figure was calculated as follows: ((Assistant General Counsel for 87 hours at $430 per hour) + (Compliance Attorney for 77 hours at $320 per hour) + (Computer Operations Department Manager for 23 hours at $367 per hour) + (Senior Business Analyst for 23 hours at $232 per hour)) = $75,827 × 16 standards pursuant to proposed Rules 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (14), (15) and (c)(2) = $1,213,232 × 17 respondent clearing agencies = $20,624,944) + (($75,827 × 8 standards pursuant to proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7) and (c)(1) = $606,616 × 9 clearing agencies = $5,459,544) = $26,084,488. *See supra* note 195.

[283] This figure was calculated as follows: ((Chief Compliance Officer for 40 hours at $423 per hour) + (Computer Department Operations Manager for 40 hours at $367 per hour) + (Senior Programmer for 20 hours at $304 per hour) = $37,680 × proposed Rules 17Ad–22(d)(2), (8), (9), (11), (15) and (d)(2)) = $226,080 × 17 respondent clearing agencies = $3,843,360 + ($37,680 × 9 clearing agencies for proposed Rules 17Ad–22(b)(4) = $339,120) = $4,182,480. *See supra* note 253.

[284] This $30,266,968 figure is the sum of the one-time costs calculated in note 282, $26,084,488, plus the one-time costs calculated in note 283, $4,182,480.

[285] This figure was calculated as follows: ((Compliance Attorney for 60 hours at $320 per hour = $19,200 × 16 standards pursuant to proposed Rules 17Ad–22(d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15) and (c)(2) = $307,200 × 17 respondent clearing agencies = $5,222,400) + ($19,200 × 8 standards pursuant to proposed Rules 17Ad–22(b)(1), (2), (3), (4), (5), (6), (7) and (c)(1) =

Proposed Rule 17Ad–22(b)(4) would entail ongoing costs. To meet the requirements of the proposed Rule 17Ad–22(b)(4) to provide for an annual model validation, the Commission preliminarily believes clearing agencies would hire a consulting firm that dedicates two consultants to the project. The Commission estimates that this requirement would impose an ongoing annual cost of approximately $432,000 for each respondent, which corresponds to a total annual cost of approximately $7,776,000 in the aggregate for all respondent clearing agencies.[286]

Proposed Rule 17Ad–22(b)(6) would impose ongoing costs on the nine estimated clearing agencies that provide CCP services. The rule would impose these ongoing costs to the extent that staff from the legal, compliance, risk or other departments at the clearing agency providing CCP services would be responsible for ensuring that the clearing agency's membership standards do not require participants to maintain a portfolio of a minimum size or to maintain a minimum transaction volume threshold. This gate-keeping responsibility required in Rule 17Ad–22(b)(6) is unlikely to require the complete work hours of a full-time employee. Instead, as an ongoing cost related to preventing these specific types of participation standards, the cost would likely represent a fraction of total staff time and related costs. Based on the Commission's experience regulating clearing agencies that provide CCP services, it is unlikely that such a clearing agency would frequently seek to change its membership requirements in a way that would be inconsistent with proposed Rule 17Ad–22(b)(6). Therefore, the fractional cost imposed on the clearing agency by the proposed rule would likely be small compared to the clearing agency's overall cost of paying the same staff to perform their other job responsibilities.

In addition, proposed Rule 17Ad–22(b)(7) may require a clearing agency that provides CCP services to update its policies and procedures relating to its net capital requirements if it determines that the clearing agency should provide for a higher net capital requirement (*i.e.,* higher than $50 million) as a condition for membership. This work would entail the preparation of potentially one new policy annually reflecting the clearing agency's updated net capital requirements. To meet these ongoing requirements of proposed Rule 17Ad–22(b)(7), the Commission preliminarily estimates a total annual cost of $682,443 in the aggregate for all respondent clearing agencies.[287] The proposed rule's requirement that a clearing agency that provides CCP services must provide a person with net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency (with any net capital requirements being scalable so that they are proportional to the risks posed to the clearing agency by the participant's activities) would also impose costs on the operations of the clearing agency. Specifically, certain clearing agencies that provide CCP services would likely need to revise their admission criteria so that they are scalable and still provides for effective measures to limit the risks that smaller members present to the clearing agency. This would involve implementation and oversight of any measures such as heightened margin requirements, limited access to clearing services, portfolio and transaction requirements, or other risk management measures used as part of the scalable membership classes that would be designed by the clearing agency under the proposed rule.

The requirements in proposed Rules 17Ad–22(c)(1) and (2) would also impose ongoing costs on clearing agencies. Under proposed Rule 17Ad–22(c)(1), the requirement for a clearing agency that provides CCP services to calculate and maintain a record of the financial resources necessary to meet the requirements of proposed Rule 17Ad–22(b)(3), as well as sufficient documentation to explain the methodology it uses to compute such financial resource requirement, would require the efforts of clearing agency compliance and operational personnel to create the reports, properly document them and ensure the reports and supporting documentation are properly record kept. To meet these ongoing requirements of proposed Rule 17Ad–22(c)(1), the Commission preliminarily estimates a total annual cost of $37,944.[288]

Proposed Rule 17Ad–22(c)(2) would require each clearing agency to post on its Web site an annual audited financial report. Each financial report would have to: (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years and be prepared in accordance with U.S. GAAP, except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country the financial statements may be prepared according to U.S. GAAP or IFRS as issued by the International Accounting Standards Board; (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01); and (iii) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02). This requirement would necessitate work hours of compliance personnel and finance personnel at the clearing agency to compile relevant data, organize and analyze that data, and then post it to the clearing agency's Web site consistent with the rule. The requirement would also require the services of a registered public accounting firm. The Commission estimates those services would cost approximately $500,000 annually. Therefore, to meet the ongoing requirements of proposed Rule 17Ad–22(c)(2) the Commission estimates a total annual cost of approximately $10,239,984 in the aggregate for all respondent clearing agencies.[289]

Consequently, this results in a total, annual burden imposed by proposed Rule 17Ad–22 of approximately $25,397,171.[290]

Recent assessments of the registered U.S. clearing agencies support the conclusion that these entities generally meet or exceed analogous standards of operation and governance to those that are contained within Rule 17Ad–22. Those findings support a view that the

$153,600 × 9 clearing agencies = $1,382,400)) = $6,660,800. *See supra* note 196.

[286] This figure was calculated as follows: 2 Consultants for 30 hours per week at $600 per hour = $36,000 per week × 12 weeks = $432,000 per clearing agency × 9 clearing agencies = $7,776,000.

[287] This figure was calculated as follows: ((Assistant General Counsel for 87 hours at $430 per hour) + (Compliance Attorney for 77 hours at $320 per hour) + (Computer Operations Department Manager for 23 hours at $367 per hour) + (Senior Business Analyst for 23 hours at $232 per hour)) = $75,827 × 1 new policy annually in response to Rule 17Ad–22(b)(7) = $75,827 × 9 respondent clearing agencies = $682,443. *See supra* note 195.

[288] This figure was calculated as follows (Compliance Attorney for 1 hour at $320 per hour) + (Computer Operations Department Manager for 2 hours at $367)) = $1,054 per quarter × 4 quarters per year = $4216 per year × 9 clearing agencies = $37,944.

[289] This figure was calculated as follows: ((Senior Accountant for 500 hours at $198 per hour) + (Senior Systems Analyst for 8 hours at $259 per hour) + (Compliance Attorney for 4 hours at $320) = $102,352 + $500,000 for independent public accounting services = $602,352 × 17 respondent clearing agencies = $10,239,984. *See supra* notes 192 and 193.

[290] This $25,397,171 figure is the sum of the aggregate annual costs estimated in note 285, $6,660,800, plus the aggregate annual cost estimated in note 286, $7,776,000, plus the aggregate cost estimated in note 287, $682,443, plus the aggregate annual cost estimated in note 288, $37,944, plus the aggregate annual cost estimated in note 289, $10,239,984.

requirements of proposed Rule 17Ad–22 would not be likely to require the clearing agencies to build new infrastructure or modify operations to continue to meet the standards.[291] The Commission's oversight of the entities clearing CDS pursuant to the CDS Clearing Exemption Orders forms the basis for a similar belief that no associated start-up costs would be imposed because those entities already represent through the CDS Clearing Exemption Orders that they meet the CPSS–IOSCO standards for central counterparties, which impose similar requirements to those contained in proposed Rule 17Ad–22.

B. Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies That Perform Central Counterparty Services

The Commission is proposing new Rule 17Aj–1 which would require every security-based swap clearing agency that performs CCP services to make available to the public all end-of-day settlement prices and any other prices with respect to security-based swaps that it may establish to calculate mark-to-market [292] margin requirements for its participants. Proposed Rule 17Aj–1 would also require security-based swap clearing agencies that perform CCP services to make available to the public any other pricing or valuation information with respect to security-based swaps that it otherwise publishes or makes available to its participants. Under the proposed rule, this information is not required to be made available to the public free of charge. Instead, it must be provided to the public on terms that are fair, reasonable and not unreasonably discriminatory.

1. Benefits

Proposed Rule 17Aj–1 would provide a publicly available source of pricing and valuation information for pricing and valuation in the security-based swap markets. The Commission recognizes that other market mechanism created under the Dodd-Frank Act, such as security-based swap data repositories and security-based swap execution facilities, will also generate security-based swap pricing data. Under the Dodd-Frank Act, all security-based swap transactions are required to be reported to a security-based swap data repository, or, if such data repository does not exist, to the Commission.[293] Consequently, security-based swap data repositories would consolidate post-trade information about security-based swaps that the Commission preliminarily believes would be helpful for analyzing the security-based swap market as a whole and identifying its risks.[294] Similarly, security-based swap execution facilities will provide important pre-trade information about security-based swaps.

However, the Commission preliminarily believes that pricing and valuation information generated by clearing agencies would add value beyond pre- and post-trade pricing information. Rather than basing risk management of clearance and settlement on pre- or post- trade pricing that may be stale, or may be inappropriate to facilitate a clearing agency's risk management practices for other reasons, clearing agencies frequently generate their own prices for security-based swaps, either through consensus pricing or pricing models. Those prices are then used to inform the clearing agency's margin requirements for its participants and the risk management of the clearing facility.

End-of-day pricing information is pricing during the life of a security-based swap that is not otherwise available from pre- and post- trade market sources—for instance from a security-based swap execution facility or security-based swap data repository. Therefore, the Commission preliminarily believes public availability of the end-of-day pricing information, as well as any other pricing information the security-based swap clearing agency publishes or distributes with respect to security-based swaps can provide helpful transparency to market participants about the value of similar security-based swap positions they may hold. Accordingly, the Commission preliminarily believes that requiring the information to be made publicly available on terms that are fair, reasonable and not unreasonably discriminatory improves fairness, efficiency, and market competition by providing availability to data that may otherwise be difficult for some market participants to obtain.

2. Costs

The proposed rule requiring dissemination of pricing and valuation information would impose initial and ongoing costs on security-based swap clearing agencies. To establish the necessary pricing and valuation infrastructure to satisfy Rule 17Aj–1, security-based swap clearing agencies that perform CCP services would bear the cost of establishing the applicable infrastructure capabilities. The Commission notes that entities providing CCP services for security-based swaps are currently required by the CDS Clearing Exemption Orders to disseminate pricing and valuation information.

As noted above in section V.D.2., based on staff conversations with industry representatives already subject to similar requirements under the CDS Clearing Exemption Orders, the Commission preliminarily estimates that the one-time burden for a security-based swap clearing agency that performs CCP services to comply with the requirements of proposed Rule 17Aj–1 would only involve adjustments to computing systems required as part of registration. The Commission estimates that for a clearing agency to adjust its systems beyond the specifications associated with registration would impose a one-time cost of approximately $37,680 on each respondent clearing agency, corresponding to a total one-time aggregate cost imposed on all respondent clearing agencies of approximately $226,080.[295]

To meet the requirements of the proposed rule, security-based swap clearing agencies that perform CCP services would have a continuous responsibility to make the relevant pricing and valuation information available. The Commission estimates this imposes an ongoing annual aggregate burden of $22,020 for each respondent, which corresponds to an

[291] *See generally* International Monetary Fund, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the National Securities Clearing Corporation's Observance of the CPSS–IOSCO Recommendations for Central Counterparties 4–29 (2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10129.pdf;* International Monetary Fund, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the Depository Trust Company's Observance of the CPSS–IOSCO Recommendations for Securities Settlement Systems 4–40 (2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10128.pdf.*

[292] *See supra* note 91 (explaining the specific meaning of "mark-to-market" in the context of the margin practices of security-based swap clearing agency margin practices).

[293] *See* Public Law 111–203, §§ 763(i) and 766(a) (adding Exchange Act Sections 13(m)(1)(G) and 13A(A)(1), respectively). The Dodd-Frank Act amends the CEA to provide for a similar regulatory framework with respect to transactions in swaps regulated by the CFTC.

[294] *See* Exchange Act Release No. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (discussing in Section II, Role, Regulation, and Business Models of SDRs, that the enhanced transparency provided by an SDR is important to help regulators and others monitor the build-up and concentration of risk exposures in the security-based swaps market).

[295] This figure was calculated as follows: ((Chief Compliance Officer for 40 hours at $423) + (Computer Operations Department Manager for 40 hours at $367) + (Senior Programmer for 20 hours at $304)) = $37,680 dollars × 6 respondent clearing agencies = $226,080. *See supra* note 253.

ongoing aggregate annual cost of $132,120 for all respondent clearing agencies.[296]

C. Clearing Agency Policies and Procedures To Protect the Confidentiality of Trading Information of Clearing Agency Participants

Proposed Rule 17Ad–23 would require each registered clearing agency to establish, maintain and enforce written policies and procedures designed to protect the confidentiality of any and all transaction information that the clearing agency receives. Such transaction information may include, but is not limited to, trade data, position data, and any non-public personal information about a clearing agency member or participant or any of its members or participant's customers. The proposed rule also provides that the required policies and procedures shall include, but are not limited to, (a) limiting access to confidential trading information of clearing members to those employees of the clearing agency who are operating the system or responsible for its compliance with any other applicable laws or rules and (b) standards controlling employees and agents of the clearing agency trading for their personal benefit or the benefit of others.

1. Benefits

The proposed standards are intended to promote implementation of adequate measures taken by a clearing agency to safeguard data, which can increase market participants' confidence in the safety and reliability of a clearing agency. Trade data stored by a clearing agency should be protected from loss, leakage, unauthorized access and other processing risks. It is necessary for a clearing agency to apply information security and system integrity objectives to its own operations to protect trade data during transmission and dissemination. These protections for trade data benefit participants by helping to ensure, for instance, that participant trade data is not leaked to other market participants who may attempt to use that information to front run participant trades or misappropriate it in other ways. Protections for trade data by a clearing agency also generate the benefit to participants of promoting the confidence among participants and their customers that use of a clearing agency to clear and settle trades will not result in economic or reputational harm to the clearing agency's users. This, in turn, promotes overall marketplace confidence in the clearance and settlement system for securities transactions.

2. Costs

Proposed Rule 17Ad–23 would impose costs on a clearing agency to establish procedures to protect the confidentiality of trading information of participants. However, the entities providing CCP services for security-based swaps pursuant to the CDS Clearing Exemption Orders already maintain and enforce safeguards to protect the confidentiality of trading information of participants as part of those orders. While the Commission notes that those respondents may not need to make additional, one-time changes to meet the requirements of proposed Rule 17Ad–23, the Commission is assuming for the purpose of this cost-benefit analysis that proposed Rule 17Ad–23 would impose one-time costs on them. As discussed above in section V.D.3., based on staff discussions with industry representatives already subject to similar requirements under the CDS Clearing Exemption Orders, the Commission has estimated the burdens and related costs of these requirements for clearing agencies.

The Commission does anticipate the rule would impose one-time costs at the remaining six clearing agencies related to the coordinated research and development costs between compliance, legal, operational, and information technology staff. Protecting confidential information in compliance with the requirements of the proposed rule would likely necessitate drawing on expertise and knowledge from each of these areas. The number of employees and number of employee hours required to deliver the necessary information could vary slightly between clearing agencies given that clearing agencies may divide the skill sets of their employees differently. However, for a clearing agency to create policies and procedures protecting the confidentiality of trading information of participants, the Commission believes the rule would impose a one-time cost on each clearing agency of approximately $227,290, corresponding to an aggregate one-time cost to all respondent clearing agencies of approximately $3,863,930.[297]

The rule would also impose ongoing costs associated with storing confidential data in the form and manner prescribed by the clearing agency's policies and procedures, which would be designed to control access to that information. Such costs are likely to include monitoring and testing of the integrity of the access controls on the data and potentially updating those controls as new technology becomes available or as the clearing agency modifies the safeguarding requirements within the policies and procedures. The Commission believes these responsibilities would impose an ongoing annual cost per clearing agency of approximately $56,942, corresponding to an annual aggregate cost to all clearing agencies of approximately $7,990,544.[298]

D. Exemption From Clearing Agency Definition

The Commission is proposing new Rule 17Ad–24 which would exempt from the definition of clearing agency, as defined in Section 3(a)(23)(A) of the Exchange Act, certain registered security-based swap dealers and security-based swap execution facilities.

1. Benefits

The proposed rule described in this section would provide for the exclusion of certain registered security-based swap dealers and registered security-based swap execution facilities from the definition of a clearing agency. The proposed rule is intended to avoid subjecting these entities, where appropriate, to multiple registrations when doing so would impose overlapping or duplicative requirements with marginal benefits or no benefits to safeguarding securities and funds and protecting investors.

2. Costs

The Commission anticipates any costs associated with the proposed rule are likely to be minimal. Registered security-based swap dealers and registered security-based swap execution facilities that perform certain limited clearing agency functions could rely on the proposed exemption upon determining that their clearing agency

[296] This figure was calculated as follows: Computer Operations Department Manager for 60 hours at $367 dollars per hour = $22,020 × 6 security-based swap clearing agencies = $132,120. *See supra* note 254.

[297] This figure was calculated as follows ((Chief Compliance Officer for 210 hours at $423 per hour) + (Computer Operations Department Manager for 180 hours at $367 per hour) + (Senior Programmer for 180 hours at $304 per hour) + (Risk Management Specialist for 40 hours at $192 per hour) + ($10,000 software costs)) = $227,290 × 17 respondent clearing agencies = $3,863,930. *See supra* note 256.

[298] This figure was calculated as follows: Compliance Attorney at 4 hours per business day × 260 business days per year = 1,040 hours per year at $423 per hour + ((Computer Operations Department Manager for 40 hours per year at $367 per hour) + (Senior Programmer for 40 hours per year at $304 per hour) + (Senior Risk Management Specialist at 8 hours per year at $409 per hour)) = $470,032 × 17 respondent clearing agencies = $7,990,544. *See supra* note 258.

functions are within the scope of the rule.

E. Amendment of 17Ab2–1 Registration of Clearing Agencies

Proposed Rule 17Ab2–1 would provide for amendments to Section 17Ab2–1 of the Exchange Act and extends certain timeframes associated with the registration of clearing agencies.

1. Benefits

A modernized temporary registration process can serve as a useful tool by giving the Commission the option to examine a clearing agency after it becomes operational, but in advance of its registration being final. For example, a newly formed security-based swap clearing agency may only be able to provide materials regarding its anticipated activities when completing its CA–1 registration form. However, there may be value in examining the security-based swap clearing agency once it becomes operational. This has the benefit of informing the Commission by observations made through examinations and/or monitoring of active operations.

2. Costs

The amendments to the Rule 17Ab2–1 relate specifically to the operations of the Commission and the timing of its ability to grant temporary registrations for clearing agencies. As a result, the Commission preliminarily believes that the proposed amendments to Rule 17Ab2–1 are unlikely to impose costs to clearing agencies other than those that currently exist.

F. Procedures To Identify and Address Conflicts of Interest

Proposed Rule 17Ad–25 would require registered clearing agencies to establish, implement, maintain and enforce written policies reasonably designed to identify and address existing or potential conflicts of interest and minimize conflicts of interest in decision-making at the clearing agency.

1. Benefits

Requiring a clearing agency to create written policies and procedures designed to identify conflicts of interest would help a clearing agency evaluate its particular organization and activities and determine areas that might undermine the clearing agency's core business of clearing and settling securities transactions. A documented plan provides a clear set of guidelines that can focus the clearing agency's evaluation and ensure consistency in the way those evaluations are performed. Similarly, if conflicts are identified, the policies and procedures offer a standard method of approaching those conflicts to make sure they are addressed. The procedures would also provide a documented plan against which the Commission could evaluate a clearing agency's efforts to mitigate conflicts and provide the Commission with a better understanding of those areas of operation and organization about which a clearing agency may be particularly concerned.

2. Costs

Creating written policies and procedures under proposed Rule 17Ad–25 that are reasonably designed to identify and address conflicts of interest would necessitate an evaluation by each clearing agency of the areas in its operation that are likely to be susceptible to conflicts of interest. This review is an exercise likely to require collaboration between the board of directors of the clearing agency and senior management given that many of the potential conflicts are likely to revolve around the participant admissions and voting rights practices of the clearing agency. After the review, the Commission anticipates that the compliance or legal staff of the clearing agency would be assigned to draft policies and procedures.

As discussed in section V.D.4., the Commission preliminarily believes that there are analogous policies and procedures requirements for Regulation NMS and in the proposed requirements for security-based swap data repositories that are informative of the burdens and related costs to clearing agencies under proposed Rule 17Ad–25. The Commission believes that the one-time cost to research and create the policies and procedures would be approximately $191,654 for each clearing agency, corresponding to a one-time aggregate cost to all clearing agencies of approximately $3,258,118.[299] Costs would also be incurred by the clearing agency to monitor and enforce the policies and procedures. The Commission preliminarily believes this would impose an annual cost of approximately $38,400 per clearing agency, corresponding to an annual aggregate burden to all clearing agencies of approximately $652,800.[300]

G. Standards for Board or Board Committee Directors

Proposed Rule 17Ad–26 would set forth governance standards that clearing agencies would be required to establish with respect to their board members and board committee directors. These standards would include at least the following areas: (i) A clear articulation of the roles and responsibilities of directors serving the clearing agency's board and any board committees; (ii) director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management; (iii) disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws; and (iv) policies and procedures for the periodic review by the board or a board committee of the performance of its individual members.

1. Benefits

Clearing agencies are at the heart of the settlement process. Moreover, because their activities are subject to significant economies of scale, many are sole providers of clearing and settlement services to the market they serve. Therefore, their performance is a critical determinant of the safety and efficiency of those markets. No single set of governance arrangements is appropriate for all clearing agencies within the various securities markets and regulatory schemes. However, an effectively governed clearing agency should meet certain key minimum requirements. Among these are delivering sound risk management; ensuring a clear separation between reporting lines for risk management and other clearing agency operations, meeting public interest requirements, identifying those principally responsible for achieving the clearing agencies governance objectives, and disclosing the extent to which these objectives have been met.

Requiring registered clearing agencies to establish standards for their board and board committee members helps to ensure that well-qualified individuals contribute to effective governance of a clearing agency. Board members who can provide guidance by drawing on expertise in the securities industry, clearance and settlement, and risk management are well positioned to

[299] This figure was calculated as follows: ((Assistant General Counsel for 87 hours at $430 per hour) + (Compliance Attorney for 77 hours at $320 per hour) + (Computer Operations Department Manager for 23 hours at $367 per hour) + (Senior Business Analyst for 23 hours at $232 per hour)) = $75,827 × 2 policies and procedures + $40,000 in one-time outside legal costs = $191,654 × 17 respondent clearing agencies = $3,258,118. *See supra* notes 261 and 262.

[300] This figure was calculated as follows: Compliance Attorney for 60 hours at $320 per hour = $19,200 × 2 policies and procedures = $38,400 × 17 respondent clearing agencies = $652,800. *See supra* note 263.

make decisions that account for the positions of the various participants in the market the clearing agency serves as well as to balance those perspectives with the goals of stability and efficiency of the clearing agency. In the interest of promoting informed and balanced decision making in governance, requiring each clearing agency to establish governance standards that include disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws, would help clearing agencies evaluate whether persons who have been found to have violated the securities laws, or other similar laws or statutes, may not be fit to serve on the clearing agency's board or board committees.

Proposed Rule 17Ad–26 would also benefit the clearing agency and its participants by creating a degree of certainty in the role and responsibility of each director and in defining instances appropriate for removal of a director. The requirement for a clear articulation of the role and responsibility of each director focuses the governance resources of the clearing agency and provides commonly understood boundaries with respect to what is expected of each director. Clearly articulating those expectations can help the directors understand how to make individual contributions to the governance of the clearing agency as well as the ways in which they are expected to work with one another to govern the clearing agency effectively.

Finally, requiring clearing agencies to establish policies and procedures for the periodic review by the board or a board committee of the performance of its individual members would support prompt and accurate clearance and settlement because directors play a vital role in the decision-making processes of the clearing agency. These reviews would promote focused analysis on the contributions that directors make to the clearing agency and how those contributions are particularly valuable or could be adjusted or improved to better support the clearing agency's ability to operate in effectively.

2. Costs

Proposed Rule 17Ad–26 would set forth governance standards applicable to a clearing agency's board members and board committee directors. The rule would require clearing agencies to adopt procedural frameworks that inform the governance of the clearing agency.

Proposed Rule 17Ad–26 would require a clearing agency to incur research and development costs associated with creating standards for its board members and board committee members. The Commission anticipates that there would likely need to be a coordinated effort between different business units within a clearing agency to develop these standards. As discussed in section V.D.5., the Commission preliminarily believes that there are analogous policies and procedures requirements for Regulation NMS and in the proposed requirements for security-based swap data repositories that are informative of the burdens and related costs for clearing agencies under proposed Rule 17Ad–26. The Commission believes that the one-time cost to a clearing agency imposed by the rule would be approximately $95,827, corresponding to a one-time aggregate cost to all clearing agencies of approximately $1,629,059.[301]

Also involved would be the time of the clearing agency's employees that would be devoted to maintaining application of the standards to the incumbent directors, evaluating new directors and evaluating the incumbent directors on an annual basis. For example, the Commission preliminarily believes that a compliance attorney at a clearing agency may be asked to update the clearing agency's standards to clearly reflect the roles and responsibilities of the clearing agency's directors. Similarly, time of a compliance attorney may be needed to amend the standards with respect to director qualifications and disqualifying factors for service if the clearing agency decides to make changes to those aspects of its governance standards. The Commission preliminarily believes that the annual cost to each clearing agency would be approximately $19,200, corresponding to an annual aggregate cost to all clearing agencies of approximately $326,000.[302] In addition, the Commission preliminarily believes that third party facilitation of the annual review of the incumbent board members would also impose an ongoing annual cost of $6,000 for each respondent, which corresponds to a total annual cost of $102,000 in the aggregate for all respondent clearing agencies.[303] An employee at the clearing agency may be expected to help arrange and coordinate such a third-party review of the clearing agency's board members, which would also factor into the ongoing, annual cost to a clearing agency.

H. Proposed Rule 3Cj–1 Designation of Chief Compliance Officer

Proposed Rule 3Cj–1 would incorporate the requirements of Section 3Cj of the Exchange Act and impose additional requirements. Proposed Rule 3Cj–1 would require each registered clearing agency to designate a CCO. Under proposed Rule 3Cj–1(b), the CCO would be responsible for, among other matters, establishing policies and procedures for the remediation of non-compliance issues identified by the CCO and establishing and following appropriate procedures for the prompt handling of management response, remediation, retesting, and closing of non-compliance issues.

Under Proposed Rule 3Cj–1(c), the CCO would also be responsible for preparing and signing an annual compliance report that contains a description of (i) the compliance of the clearing agency with respect to the Federal securities laws and the rules and regulations thereunder, and (ii) each policy and procedure of the clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency). This compliance report must accompany each appropriate financial report of the clearing agency that is required to be furnished to the Commission pursuant to the Exchange Act and the rules thereunder and include a certification that, under penalty of law, the compliance report is accurate and complete.

Additionally, the compliance report would be required to: (i) Be submitted to the board of directors and audit committee (or equivalent bodies) of the clearing agency promptly after the date of execution of the required certification and prior to filing of the report with the Commission; (ii) be filed with the Commission in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T; and (iii) be filed with the Commission within 60 days after the end of the fiscal year covered by such report.

1. Benefits

Proposed Rule 3Cj–1 is designed to ensure that clearing agencies comply with Federal securities laws, including the Exchange Act and the rules and

[301] This figure was calculated as follows: ((Assistant General Counsel for 87 hours at $430 per hour) + (Compliance Attorney for 77 hours at $320 per hour) + (Computer Operations Department Manager for 23 hours at $367 per hour) + (Senior Business Analyst for 23 hours at $232 per hour)) = $75,827 + $20,000 in one-time outside legal costs = $95,827 × 17 respondent clearing agencies = $1,629,059. *See supra* notes 266 and 267.

[302] This figure was calculated as follows: Compliance Attorney for 60 hours at $320 per hour = $19,200 × 17 respondent clearing agencies = $326,400. *See supra* note 268.

[303] This figure was calculated as follows: One Consultant for 20 hours at $600 per hour = $12,000 × 17 respondent clearing agencies = $204,000. *See supra* note 269.

regulations promulgated thereunder. Although entities currently operating as clearing agencies already may have CCOs in place, Section 3C(j) of the Exchange Act and proposed Rule 3Cj–1 would make it a required practice.

The designation of a CCO would help ensure that each clearing agency complies with the written policies and procedures it adopts. The Commission expects requiring this safeguard would in turn facilitate accurate data reporting by clearing agencies to the Commission and improve the Commission's understanding of operations across all the clearing agencies it oversees.

Proposed Rule 3Cj–1 would focus on creating a compliance structure that is transparent and minimizes conflicts. Section 3C(j) of the Exchange Act provides flexibility in permitting the CCO to report either to the clearing agency's board or to a senior officer. Because the Commission is concerned that a clearing agency's commercial interests might discourage a clearing agency's CCO from making forthright disclosure about compliance failures of the clearing agency, the proposed rule would insulate the CCO from management pressures by preventing a senior officer of a clearing agency from removing the CCO or determining the CCO's compensation without the approval of a majority of the clearing agency's board. This would provide the benefit of aligning the CCO's position within the clearing agency with having the CCO serve as a mechanism that freely encourages compliance.

The reliability of clearance and settlement services depends on the integrity of a clearing agency's operations. As a result of the proposed rule, the accuracy, reliability, and integrity of the clearing agency would be less likely to be harmed by violations of the securities laws because experience has shown that strong internal compliance programs lower the likelihood of securities laws violations and enhance the likelihood that any violations that do occur will be detected and corrected. The designation of a CCO, who will, among other things, monitor the clearing agency's compliance with the Exchange Act (including Section 17A) and the rules and regulations thereunder and with the relevant clearing agency policies and procedures, will help ensure that each clearing agency complies with the written policies and procedures it adopts.

2. Costs

As discussed in section V.D.6., the Commission preliminarily believes that there are analogous policies and procedures requirements for Regulation NMS and in the proposed requirements for security-based swap data repositories that are informative of the burdens and related costs for clearing agencies under proposed Rule 3Cj–1.

The establishment of a designated CCO and compliance with the accompanying responsibilities of a CCO would impose certain costs on each clearing agency. The Commission estimates that the average initial costs associated with establishing policies and procedures for the remediation of non-compliance issues identified by the CCO and establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues would require approximately 420 hours of employee time and approximately $40,000 for each clearing agency, and the average ongoing paperwork cost would be 120 hours for each clearing agency. In addition, each clearing agency would be required to hire a CCO to comply with the proposed rules, at an annual cost of approximately $761,400 for each clearing agency.[304] Therefore, the aggregate initial estimated dollar cost per year to each clearing agency would be approximately $191,654 for each respondent clearing agency, corresponding to an aggregate initial estimated cost to all respondent clearing agencies of approximately $3,258,118 [305] and the aggregate ongoing estimated dollar cost per year would be approximately $13,596,600 [306] to comply with the proposed rule.

The Commission estimates that the average ongoing paperwork cost associated with preparing, signing and submitting annual compliance reports pursuant to proposed Rule 3Cj–1(c)(iii) and (iv) would be 54 hours for each respondent clearing agency, corresponding to an annual cost of $17,036 for each clearing agency and an aggregate annual cost of $289,612 for all respondent clearing agencies.[307]

The Commission believes that currently-existing clearing agencies already maintain compliance programs that are overseen by a CCO or an individual who effectively serves as a CCO. In addition, such clearing agencies may prepare compliance reports presented to senior management and/or the clearing agency's board and board committees as part of their current business practice. Therefore, the Commission expects that clearing agencies with substantial commitments to compliance would probably incur only minimal costs in connection with the adoption of the proposed rule. However, for a clearing agency that does not already prepare these types of annual compliance reports as part of its compliance program, the requirements under proposed Rule 3Cj–1 would likely require the labor of clearing agency staff and impose direct costs on the clearing agency as described above.

I. Request for Comment

The Commission solicits comments on the benefits and costs related to proposed Rules 17Ad–22, 17Ad–23, 17Ad–24, 17Ad–25, 17Ad–26, 17Ab2–1, 3Cj–1 and 17j–1. The Commission specifically requests comments on the initial and ongoing costs associated with these rules and the costs associated with any personnel that may be necessary to support compliance with the rules. Are there additional costs that the Commission should consider? Are there alternatives that the Commission should consider? Do the estimates accurately reflect the costs that are discussed? Please describe and, to the extent practicable, quantify the costs associated with any comments that are submitted.

The Commission requests data to quantify the costs and the value of the benefits discussed above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not addressed, which may result from the adoption of the proposed rules. Commenters should provide analysis and empirical data to support their views.

[304] This figure was calculated as follows: Chief Compliance Officer for 1,800 hours at $423 per hour = $761,400. *See supra* note 279 regarding hourly rates for professionals taken from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* and modified by the Commission's staff.

[305] This figure was calculated as follows: ((Assistant General Counsel for 87 hours at $430 per hour) + (Compliance Attorney for 77 hours at $320 per hour) + (Computer Operations Department Manager for 23 hours at $367 per hour) + (Senior Business Analyst for 23 hours at $232 per hour)) = $75,827 × 2 policies and procedures + $40,000 in one-time outside legal costs = $191,654 × 17 respondent clearing agencies = $3,258,118. *See supra* notes 275 and 277.

[306] This figure was calculated as follows: Compliance Attorney for 60 hours at $320 per hour = $19,200 × 2 policies and procedures = $38,400 + $761,400 for the annual salary of a Chief Compliance Officer = $799,800 × 17 respondent clearing agencies = $13,596,600. *See supra* notes 276 and 304.

[307] This figure was calculated as follows: ((Compliance Attorney for 50 hours at $320 per hour) + (Senior Systems Analyst for 4 hours at $259 per hour)) = $17,036 × 17 respondent clearing agencies = $289,612. *See supra* note 278.

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a) of the Exchange Act [308] requires the Commission, when making rules and regulations under the Exchange Act, to consider the effect a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[309] Section 3(f) of the Exchange Act [310] requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

The economic effects of the proposed rules were discussed in detail in the costs and benefits section.[311] These effects encompassed effects on economic efficiency, competition, and capital formation.

To reiterate, proposed Rules 17Ad–22 through 17Ad–26, 17Aj–1, 3Cj–1 and the proposed amendments to Rule 17Ab2–1 would set standards for the operation and governance of registered clearing agencies. These proposed rules are intended to further the purposes of the Exchange Act and to promote transparency and accountability consistent with the stated goals of the Dodd-Frank Act.[312]

Evidence from the securities markets suggests that clearing agencies over the long-run tend to converge to a small number of entities or even a single entity. In part, the Commission preliminarily believes that this is because clearing activities are characterized by high start-up costs and low marginal costs so that there are large economies of scale. For example, currently all trades executed on the eight U.S. based options exchanges are cleared at The Options Clearing Corporation, and trades executed on the U.S. equity markets, composed of exchanges, alternative trading platforms, and OTC trading, are cleared at National Securities Clearing Corporation. In this same way, it is possible that a single security-based swap clearing agency may prove itself through market forces to be the most-efficient mechanism to serve all security-based swap clearing participants by delivering the lowest-cost services.

As noted above, the current market structure for clearing agencies includes four registered clearing agencies and four entities operating pursuant to the CDS Clearing Exemption Orders that are eligible to become registered security-based swap clearing agencies pursuant to the Deemed Registered Provision of the Dodd-Frank Act. In addition, the Commission preliminarily believes there may be entities using instrumentalities of interstate commerce to perform collateral management, trade matching, Tear Up Services or similar security-based swap lifecycle event services that consequently may trigger the clearing agency registration requirement.[313]

The intent of the proposed rules concerning standards for clearing agency operations and governance standards of clearing agencies is to promote the prompt and accurate clearance and settlement of securities transactions, including security-based swap transactions, by requiring certain minimum standards at clearing agencies. The Commission preliminarily believes that these requirements would ensure resilient and cost-effective clearing agency operations as well as promote transparent and effective clearing agency governance that would consequently support confidence among market participants in clearing agencies' ability to serve as efficient mechanisms for clearance and settlement and to facilitate capital formation.

Additionally, the Commission believes that proposed Rule 17Aj–1 would support efficiency and the capital formation process by promoting security-based swap price transparency so that market participants have access to more information to value their security-based swap positions. Under the Dodd-Frank Act, all security-based swap transactions are required to be reported to a security-based swap data repository, or, if no such data repository exists, to the Commission.[314] Consequently, security-based swap data repositories consolidate post-trade information about security-based swaps. The Commission preliminarily believes this is helpful for analyzing the security-based swap market as a whole and identifying its risks.[315] Similarly, security-based swap execution facilities provide important pre-trade information about security-based swaps. In addition, there are also financial services information firms that provide certain security-based swap pricing data.

However, the Commission preliminarily believes that the pricing and valuation information generated by security-based swap clearing agencies adds value beyond these pre- and post-trade pricing sources as well as information that may be available from firms that provide financial services data. This is because proposed Rule 17Aj–1 would require a security-based swap clearing agency that performs CCP services to produce end-of-day settlement prices for all security-based swaps that it clears. This end-of-day pricing information represents pricing during the life of a security-based swap that is unique because it is not available from pre- and post-trade sources.

The Commission also preliminarily believes that this information is distinct from pricing information made available by firms that sell certain security-based swap pricing date, because each clearing agency's prices are generated daily while pricing information available through other sources may rely on various methods to derive a price—for instance an average of the bid and ask for a particular security-based swap or an executed trade price that would otherwise be stale but that has been adjusted through certain modeling practices to estimate a current price. Therefore, the Commission preliminarily believes that the public availability of these end-of-day settlement prices, as well as any other pricing information the security-based swap clearing agency publishes or distributes with respect to security-based swaps can provide helpful transparency to market participants about the current value of their security-based swap positions. Accordingly, the Commission preliminarily believes that requiring this information to be made publicly available on terms that are fair, reasonable and not unreasonably discriminatory improves fairness, efficiency, and market competition by

[308] 15 U.S.C. 78w(a).

[309] 15 U.S.C. 78w(a)(2).

[310] 15 U.S.C. 78c(f).

[311] *See* discussion *supra* at Section VI. Consideration of Costs and Benefits and accompanying subsections A. through E.

[312] *See supra* note 2 and accompanying text.

[313] *See supra* note 101 and accompanying text (noting that this list of services that may trigger clearing agency registration is not exhaustive and urging every security-based swap lifecycle event service provider to consider whether their function places them within the clearing agency definition).

[314] *See* Public Law 111–203, §§ 763(i) and 766(a) (adding Exchange Act Sections 13(m)(1)(G) and 13A(A)(1), respectively). The Dodd-Frank Act amends the CEA to provide for a similar regulatory framework with respect to transactions in swaps regulated by the CFTC.

[315] *See* Exchange Act Release No. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (discussing in Section II, Role, Regulation, and Business Models of SDRs, that the enhanced transparency provided by an SDR is important to help regulators and others monitor the build-up and concentration of risk exposures in the security-based swap market).

providing availability to pricing information that may otherwise be difficult for some market participants to obtain and that, among other benefits, would allow those market participants to be better-informed about the fair value of their security-based swap positions and to try to more efficiently manage the utility of those positions within their portfolio.

The Commission requests comment on the possible effects of proposed Rules 17Ad–22, 17Ad–23, 17Ad–24, 17Ad–25, 17Ad–26, 17Aj–1, 3Cj–1 and the amendments to Rule 17Ab2–1 on efficiency, competition, and capital formation. The Commission requests that commenters provide views and supporting information regarding any such effects. The Commission recognizes that such effects may be difficult to quantify. The Commission seeks comment on possible anti-competitive effects of the proposed rules not already identified. The Commission also requests comments regarding the competitive effects of pursuing alternative regulatory approaches that are consistent with Sections 763 and 805 of the Dodd-Frank Act and Section 17A of the Exchange Act. In addition, the Commission requests comment on how the other provisions of the Dodd-Frank Act for which Commission rulemaking is required will interact with and influence the competitive effects of the proposed rules under proposed Rules 17Ad–22 through 17Ad–26, 17Aj–1, 3Cj–1 and the amendments to Rule 17Ab2–1.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[316], the Commission must advise the OMB as to whether the proposed rule constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (i) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for sixty days pending Congressional review.

The Commission requests comment on the potential impact of proposed Rules 17Ad–22 through 17Ad–26, 17Aj–1, 3Cj–1 and the amendments to Rule 17Ab2–1 on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA")[317] requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[318] of the Administrative Procedure Act,[319] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on "small entities."[320] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[321]

A. Registered Clearing Agencies

Proposed Rules 17Ad–22 through 17Ad–26, 17Aj–1, 3Cj–1 and amended Rule 17Ab2–1 would apply to all registered clearing agencies and set standards for the operation and governance of such clearing agencies. For the purposes of Commission rulemaking and as applicable to proposed Rules 17Ad–22 through 17Ad–26, 17Aj–1, 3Cj–1 and amended Rule 17Ab2–1, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter) and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[322] Under the standards adopted by the Small Business Administration, small entities in the finance industry include the following: (i) For entities engaged in investment banking, securities dealing and securities brokerage activities, entities with $6.5 million or less in annual receipts; (ii) for entities engaged in trust, fiduciary and custody activities, entities with $6.5 million or less in annual receipts; and (iii) funds, trusts and other financial vehicles with $6.5 million or less in annual receipts.[323]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission and the four entities clearing security-based swaps pursuant to the CDS Clearing Exemption Orders,[324] the Commission preliminarily believes that such entities exceed the thresholds defining "small entities" set out above. While other clearing agencies may emerge and become eligible to operate as clearing agencies and while other security-based swap lifecycle event service providers may be required to register as clearing agencies, the Commission preliminarily does not believe that any such entities would be "small entities" as defined in Exchange Act Rule 0–10.[325] Furthermore, we believe it is unlikely that any clearing agencies, security-based swap clearing agencies or security-based swap lifecycle event services providers would have annual receipts of less than $6.5 million. Accordingly, the Commission believes that any registered clearing agencies will exceed the thresholds for "small entities" set forth in Exchange Act Rule 0–12.

B. Certification

In the Commission's preliminary view, proposed Rules 17Ad–22 through 17Ad–26, 17Aj–1, 3Cj–1 and amended Rule 17Ab2–1 would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA. For the reasons described above, the Commission certifies that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including clearing agencies, other counterparties to security-based swap transactions and

[316] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[317] 5 U.S.C. 601 *et seq.*

[318] 5 U.S.C. 603(a).

[319] 5 U.S.C. 551 *et seq.*

[320] Section 601(b) of the RFA permits agencies to formulate their own definitions of "small entities." The Commission has adopted definitions for the term "small entity" for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

[321] *See* 5 U.S.C. 605(b).

[322] 17 CFR 240.0–10(d).

[323] 13 CFR 121.201, Section 52.

[324] As of July 21, 2010, the following four clearing agencies are eligible to clear security-based swaps as a result of having been granted temporary exemptive orders to operate as clearing agencies for CDS: CME, Eurex, ICE Trust and ICE Clear Europe.

[325] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about existing CCPs serving the OTC derivatives market and lifecycle event service providers.

security-based swap lifecycle event service providers, and provide empirical data to support the extent of the impact.

X. Statutory Basis and Proposed Rule Text

Pursuant to the Exchange Act, particularly, Sections 17A(d) thereof, 15 U.S.C. 78q–1(d), Sections 17A(i), 17A(j) and 3C(j) thereof, Public Law 111–203, § 763, 124 Stat. 1841 (2010), and Sections 30(b) and 30(c) thereof, 15 U.S.C. 78dd(b) and (c), and Section 805(a)(2) of the Clearing Supervision Act, 12 U.S.C. 5464(a)(2), the Commission proposes: (1) New Rules 17Ad–22(a), 17Ad–22(d), 17Ad–23, 17Ad–24, 17Ad–25, 17Ad–26 and 3Cj–1, which would govern clearing agencies; (2) new Rules 17Ad–22(b) and (c), which would govern clearing agencies that perform central counterparty services; (3) new Rule 17Aj–1, which would govern security-based swap clearing agencies that provide central counterparty services; and (4) to amend Rule 17Ab2–1.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE

1. The authority citation for Part 240 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78o–4, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Section 240.3Cj–1 is also issued under Pub. L. 111–203, § 763, 124 Stat. 1841 (2010).

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Sections 240.17Ad–22 through 240.17Ad–26 are also issued under 12 U.S.C. 5464(a)(2).

* * * * *

2. Section 240.3Cj–1 is added to read as follows:

§ 240.3Cj–1 Designation of chief compliance officer.

(a) *In general.* Each clearing agency shall designate a chief compliance officer. The compensation and removal of the chief compliance officer shall require the approval of a majority of the clearing agency's board.

(b) *Duties.* The chief compliance officer shall:

(1) Report directly to the board of directors or to the senior officer of the clearing agency;

(2) In consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

(3) Be responsible for administering each policy and procedure that is required to be established pursuant to section 3C of the Act (15 U.S.C. 78c–3) and the rules and regulations thereunder;

(4) Ensure compliance with the Act and the rules and regulations thereunder;

(5) Establish policies and procedures for the prompt remediation of any non-compliance issues identified by the chief compliance officer; and

(6) Establish and follow appropriate procedures for the prompt handling, management response, remediation, retesting, and closing of non-compliance issues.

(c) *Annual Reports*—(1) *In general.* The chief compliance officer shall annually prepare and sign a report that contains a description of:

(i) The compliance of the clearing agency with respect to the Federal securities laws and the rules and regulations thereunder; and

(ii) Each policy and procedure of the clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).

(2) *Requirements.* An annual compliance report under this section shall:

(i) Accompany each appropriate financial report of the clearing agency that is required to be furnished to the Commission pursuant to the Act and the rules thereunder;

(ii) Include a certification that, under penalty of law, the compliance report is accurate and complete;

(iii) Be submitted to the board of directors and audit committee (or equivalent bodies) of the clearing agency promptly after the date of execution of the required certification and prior to filing of the report with the Commission; and

(iv) Be filed with the Commission in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T (17 CFR 232.301).

(v) Be filed with the Commission within 60 days after the end of the fiscal year covered by such report.

(d) For purposes of this section, references to senior officer shall include the chief executive officer, or other equivalent officer.

3. Section 240.17Ab2–1 is amended by revising paragraph (c) to read as follows:

§ 240.17Ab2–1 Registration of clearing agencies.

* * * * *

(c)(1) The Commission, upon the request of a clearing agency or upon the election of the Commission, may grant registration of the clearing agency in accordance with sections 17A(b) and 19(a)(1) of the Act for a specific period of time and may exempt, other than for purposes of section 17A(g) of the Act, the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to paragraphs (A) through (I) of section 17A(b)(3) of the Act, provided that any such registration shall be effective only for twenty-four months from the date the registration is made effective (or such longer period as the Commission may provide by order).

(2) In the case of any clearing agency registered in accordance with paragraph (c)(1) of this section, not later than fifteen months from the date such registration is made effective (or such longer period as the Commission may provide by order) the Commission either will grant registration in accordance with sections 17A(b) and 19(a)(1) of the Act, without, as applicable, exempting the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to subparagraphs (A) through (I) of section 17A(b)(3) of the Act or without limiting the duration of the registration, or will institute proceedings in accordance with section 19(a)(1)(B) of the Act to determine whether registration should be denied at the expiration of the registration granted in accordance with paragraph (c)(1) of this section.

4. Section 240.17Ad–22 is added to read as follows:

§ 240.17Ad–22 Standards for clearing agencies.

(a) *Definitions*—(1) *Central counterparty* means a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.

(2) *Central securities depository services* means services of a clearing agency that is a securities depository as described in section 3(a)(23) of the Act.

(3) *Participant* as used in paragraphs (b)(3) and (d)(14) of this section means that if a participant controls another participant or is under common control with another participant then the affiliated participants shall be collectively deemed to be a single participant for purposes of that subparagraph.

(4) *Normal market conditions* as used in paragraphs (b)(1) and (2) of this section means conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time.

(5) Net capital as used in paragraph (b)(7) of this section means net capital as defined in Rule 15c3–1 under the Act for broker-dealers or any similar risk adjusted capital calculation for all other prospective clearing members.

(b) A clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to:

(1) Measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

(2) Use margin requirements to limit its credit exposures to participants in normal market conditions and use risk-based models and parameters to set margin requirements and review them at least monthly.

(3) Maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions; provided that a security-based swap clearing agency shall maintain sufficient financial resources to withstand, at a minimum, a default by the two participants to which it has the largest exposures in extreme but plausible market conditions.

(4) Provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the clearing agency's margin models (except as part of the annual model validation) and does not report to a person who performs these functions.

(5) Provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons.

(6) Have membership standards that do not require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume.

(7) Provide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency; provided, however, that the clearing agency may provide for a higher net capital requirement as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application.

(c) *Record of financial resources and annual audited financial report.* (1) Each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a clearing agency that performs central counterparty services shall calculate and maintain a record, in accordance with § 240.17a–1 of this chapter, of the financial resources necessary to meet the requirements of paragraph (b)(3) of this rule and sufficient documentation to explain the methodology it uses to compute such financial resource requirement.

(2) Each clearing agency shall post on its Web site an annual audited financial report. Each financial report shall:

(i) Be a complete set of financial statements of the clearing agency for the most recent two fiscal years of the clearing agency and be prepared in accordance with U.S. generally accepted accounting principles, except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country the financial statements may be prepared in accordance with U.S. generally accepted accounting principles or International Financial Reporting Standards as issued by the International Accounting Standards Board;

(ii) Be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01); and

(iii) Include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02).

(d) Each clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(1) Provide for a well founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

(2) Require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective, publicly disclosed, and permit fair and open access.

(3) Hold assets in a manner whereby risk of loss or of delay in its access to them is minimized; and invest assets in instruments with minimal credit, market and liquidity risks.

(4) Identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.

(5) Employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants; and require funds transfers to the clearing agency to be final when effected.

(6) Be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

(7) Evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear trades, and ensure that the risks are managed prudently on an ongoing basis.

(8) Have governance arrangements that are clear and transparent to fulfill the public interest requirements in section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants,

and to promote the effectiveness of the clearing agency's risk management procedures.

(9) Provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.

(10) Immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible when the clearing agency provides central securities depository services.

(11) Make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.

(12) Ensure that final settlement occurs no later than the end of the settlement day; and require that intraday or real-time finality-be provided where necessary to reduce risks.

(13) Eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

(14) Institute risk controls, including collateral requirements and limits to cover the clearing agency's credit exposure to each participant exposure fully, that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the clearing agency provides central securities depository services and extends intraday credit to participants.

(15) State to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.

5. Section 240.17Ad–23 is added to read as follows:

§ 240.17Ad–23 Clearing agency policies and procedures to protect the confidentiality of trading information of clearing agency participants.

Each clearing agency shall establish, implement, maintain, and enforce written policies and procedures reasonably designed to protect the confidentiality of any and all transaction information that the clearing agency receives. Such policies and procedures shall include, but are not limited to:

(a) Limiting access to confidential trading information of clearing members to those employees of the clearing agency who are operating the system or responsible for its compliance with any other applicable laws or rules; and

(b) Standards controlling employees and agents of the clearing agency trading for their personal benefit or the benefit of others.

6. Section 240.17Ad–24 is added to read as follows:

§ 240.17Ad–24 Exemption from clearing agency definition for certain registered securities based swap dealers and registered security-based swap execution facilities.

A registered security-based swap dealer and a registered security-based swap execution facility shall be exempt from inclusion in the term clearing agency, as defined in section 3(a)(23)(A) of the Act, where such registered security-based swap dealer or registered security-based swap execution facility would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary dealing activities or providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such registered security-based swap execution facility, respectively, or solely by reason of acting on behalf of a clearing agency or participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants.

7. Section 240.17Ad–25 is added to read as follows:

§ 240.17Ad–25 Clearing agency procedures to identify and address conflicts of interest.

Each clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest. Such policies and procedures must also be reasonably designed to minimize conflicts of interest in decision making by the clearing agency.

8. Section 240.17Ad–26 is added to read as follows:

§ 240.17Ad–26 Standards for board or board committee members.

(a) Each clearing agency shall establish governance standards for its board members and board committee members.

(b) Such standards shall address at least the following areas:

(1) A clear articulation of the roles and responsibilities of directors serving on the clearing agency's board and any board committees;

(2) Director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management;

(3) Disqualifying factors concerning serious legal misconduct, including violations of the Federal securities laws; and

(4) Policies and procedures for the periodic review by the board or a board committee of the performance of its individual members.

9. Section 240.17Aj–1 is added to read as follows:

§ 240.17Aj–1 Dissemination of pricing and valuation information by security-based swap clearing agencies that perform services as a central counterparty.

Each security-based swap clearing agency that performs services as a central counterparty shall make available to the public, on terms that are fair and reasonable and not unreasonably discriminatory, all end-of-day settlement prices and any other prices with respect to security-based swaps that the clearing agency may establish to calculate mark-to-market margin requirements for its participants and any other pricing or valuation information with respect to security-based swaps as is published or distributed by the clearing agency to is participants.

Dated: March 3, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–5182 Filed 3–15–11; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 2, 5, et al. and Chapter 1
Federal Aquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–50; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–50. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–50 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–50

Item	Subject	FAR case	Analyst
I	Proper Use and Management of Cost-Reimbursement Contracts (Interim)	2008–030	Sakalos.
II	Requirements for Acquisitions Pursuant to Multiple-Award Contracts (Interim)	2007–012	Clark.
III	Justification and Approval of Sole-Source 8(a) Contracts (Interim)	2009–038	Robinson.
IV	Additional Requirements for Market Research	2008–007	Sakalos.
V	Socioeconomic Program Parity (Interim)	2011–004	Morgan.
VI	Use of Commercial Services Item Authority	2008–034	Chambers.
VII	Trade Agreements Thresholds	2009–040	Davis.
VIII	Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.	2009–025	Chambers.
IX	Compensation for Personal Services	2009–026	Chambers.
X	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–50 amends the FAR as specified below:

Item I—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008–030) (Interim)

This interim rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). This law aligns with the goal of the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which is to reduce waste, fraud, and abuse in Government contracting. This rule provides internal regulatory guidance on the proper use and management of all contracts, specifically cost-reimbursement contracts. The rule identifies (1) circumstances when cost-reimbursement contracts are appropriate; (2) acquisition plan findings required to support the contract type selection; and (3) the acquisition resources necessary to award and manage a cost-reimbursement contract.

Item II—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007–012) (Interim)

This interim rule amends the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 863 mandates enhanced competition for orders placed under multiple-award contracts, including GSA's Federal Supply Schedules. If an order over the simplified acquisition threshold does not follow the section 863 competitive procedures, section 863 requires that a notice and the determination of an exception be published in FedBizOpps within 14 days after award.

The interim rule relocates all procedures for establishing a Blanket Purchase Agreement (BPA) or placing an order under a BPA in one subsection, FAR 8.405–3. New BPAs must be established in accordance with the new competition standard. Orders over the simplified acquisition threshold against a new multiple-award BPA must meet the new competition standards; use is discretionary for existing multiple-award BPAs.

For orders under FAR part 16 task- and delivery-order contracts, orders over the simplified acquisition threshold must meet the new competition procedures; each contract holder must receive notice of the intent to make a purchase.

Item III—Justification and Approval of Sole-Source 8(a) Contracts (2009–038) (Interim)

This interim rule amends the FAR to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over $20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making public the J&A and related information. This is a new internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over $20 million. It neither prohibits such awards nor increases the qualifications required of 8(a) firms. No automated systems are impacted.

Item IV—Additional Requirements for Market Research (FAR Case 2008–007)

This final rule adopts, with changes, the interim rule that amended the FAR to implement section 826 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 826, entitled "Market Research,"

established new requirements for agencies subject to Title 10, United States Code. As a matter of policy, this provision of law was applied to contracts awarded by all executive agencies. The rule requires that market research must be conducted before an agency places a task or delivery order in excess of the simplified acquisition threshold under an indefinite-delivery indefinite-quantity contract. In addition, a prime contractor with a contract in excess of $5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold. Among other changes, the final rule also deletes the language added to FAR 52.244–6 (Alternate I) and relocates it to a new FAR clause 52.210–1, Market Research.

Item V—Socioeconomic Program Parity (FAR Case 2011–004) (Interim)

This interim rule amends the FAR to implement section 1347 of the "Small Business Jobs Act of 2010" (Pub. L. 111–240) and the Small Business Administration regulations governing specific contracting and business assistance programs. Section 1347 changed the word "shall" to "may" at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B), thereby permitting a contracting officer to use discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a) Business Development Program, the Historically Underutilized Business Zone Program, or the Service-Disabled Veteran-Owned Small Business Program.

Item VI—Use of Commercial Services Item Authority (FAR Case 2008–034)

This final rule adopts, without change, an interim rule that implemented section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

Item VII—Trade Agreements Thresholds (FAR Case 2009–040)

This final rule adopts, without change, an interim rule that amended the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009–025)

This final rule adopts, without change, the interim rule that amended the FAR to revise FAR 30.201–4(c), 30.201–4(d)(1), 52.230–4, and 52.230–6 to maintain consistency between FAR and Cost Accounting Standards (CAS) regarding the administration of the Cost Accounting Standard Board's (CASB) rules, regulations and standards. This revision was necessitated by the CASB publishing a final rule in the **Federal Register** on March 26, 2008 (73 FR 15939) which implemented the revised clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

Item IX—Compensation for Personal Services (FAR Case 2009–026)

This final rule adopts, without change, the interim rule that amended the FAR to align the existing FAR 31.205–6(q)(2)(i) through (vi) with the changes made in Cost Accounting Standards (CAS) Board standards 412 "Cost Accounting Standard for composition and measurement of pension cost," and 415 "Accounting for the cost of deferred compensation." Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

Item X—Technical Amendments

Editorial changes are made at FAR 19.201, 52.212–3, and 52.212–5.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Federal Acquisition Circular (FAC) 2005–50 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–50 is effective March 16, 2011, except for Item IV which is effective April 15, 2011, and Item II which is effective May 16, 2011.

Dated: March 4, 2011.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: March 4, 2011.

Joseph A. Neurauter,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: February 28, 2011.

Sheryl J. Goddard,

Acting Assistant Administrator for Procurement National Aeronautics and Space Administration.

[FR Doc. 2011–5551 Filed 3–15–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

[FAC 2005–50; FAR Case 2008–030; Item I; Docket 2011–0082, Sequence 1]

RIN 9000–AL78

Federal Acquisition Regulation; Proper Use and Management of Cost-Reimbursement Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. This law aligns

with the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which directed agencies to save $40 billion in contracting annually by Fiscal Year (FY) 2011 and to reduce the use of high-risk contracts. This rule provides regulatory guidance on the proper use and management of other than firm-fixed-price contracts (*e.g.,* cost-reimbursement, time-and-material, and labor-hour).

DATES: *Effective Date:* March 16, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–50, FAR Case 2008–030, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008–030" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2008–030." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008–030" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–50, FAR Case 2008–030, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Lori Sakalos, Procurement Analyst, at (202) 208–0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2008–030.

SUPPLEMENTARY INFORMATION:

I. Background

This case implements section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), enacted October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting.

Section 864 requires the FAR to be revised to address the use and management of cost-reimbursement contracts and identifies the following three areas that the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council (Councils) should consider in amending the FAR—

(a) Circumstances when cost-reimbursement contracts are appropriate;

(b) Acquisition plan findings to support the selection of a cost-reimbursement contract; and

(c) Acquisition resources necessary to award and manage a cost-reimbursement contract.

1. *Guidance on Cost-reimbursement contracts.* As required, the Councils included additional coverage at FAR subpart 16.1, Selecting Contract Types, and at subpart 16.3, Cost-Reimbursement Contracts, to provide further guidance as to when, and under what circumstances, cost-reimbursement contracts are appropriate. Therefore, this rule makes the following changes:

- FAR 16.103, Negotiating contract type, is amended to revise paragraph (d) to reflect additional documentation when other than a firm-fixed-price contract type is selected.
- FAR 16.104, Factors in selecting contract types, is amended to add a new paragraph (e) to provide guidance to the contracting officer to consider combining contract types if the entire contract cannot be firm fixed-price.
- FAR 16.301–2, Application, is amended to provide guidance to the contracting officer as to the circumstances in which to use cost-reimbursement contracts as well as outlining the rationale for documentation for selecting this contract type.
- FAR 16.301–3, Limitations, is amended to (1) provide additional guidance to the contracting officer as to when a cost-reimbursement contract may be used, (2) ensure that all factors have been considered per FAR 16.104, and (3) ensure that adequate Government resources are available to award and manage this type of contract.
- FAR 7.104(e) also requires the designation of a properly trained contracting officer's representative (COR) (or contracting officer's technical representative (COTR)) prior to award of the contract or order.

2. *Identification of acquisition plan findings.* FAR 7.103, Agency-head responsibilities, is amended and renumbered to add new paragraphs 7.103(d), 7.103(f), and 7.103(j) to ensure that acquisition planners document the file to support the selection of the contract type in accordance with FAR subpart 16.1; ensure that the statement of work is closely aligned with the performance outcomes and cost estimates; and obtain an approval and signature from the appropriate acquisition official at least one level above the contracting officer. FAR 7.105(b)(5)(iv) was added to discuss the strategy to transition from cost-reimbursement contracts to firm-fixed-price contracts. Although FAR 7.105(b)(5), Acquisition considerations, requires the acquisition plans to include a discussion of contract type selection and rationale, the Councils believe that a greater emphasis on the use of cost-reimbursement contracts should be added and included a new paragraph at FAR 7.105(b)(3), Contract type selection. Additionally, FAR 16.301–3(a) has been amended and renumbered.

3. *Acquisition workforce resources.* The Councils recognize that assigning adequate and proper resources to support the solicitation, award, and administration of other than firm-fixed-price contracts (cost-reimbursement, time-and-material, and labor-hour) contract is challenging. There is also great concern that a lack of involvement in contract oversight by program offices is primarily present in other than firm-fixed-price contracts. Therefore, from the outset, contracting officers should be assured, to the greatest extent practicable, that the right resources in number, kind, and availability be assigned to support other than firm-fixed-price contracts. The Councils consider that greater accountability for the management and oversight of all contracts, especially other than firm-fixed-price contracts, can be gained and improved by requiring that properly trained CORs or COTRs (*see* FAR 2.101(b)(2), Definitions) be appointed before award. Therefore, FAR 7.104, General Procedures, and FAR 16.301–3(a)(4)(i) are amended to reflect that prior to award of a contract, especially on other than firm-fixed price contracts, at least one COR or COTR qualified in accordance with FAR 1.602–2 is designated. FAR 1.602–2, Responsibilities, is amended to add a new paragraph (d) outlining the requirement for the contracting officer to designate and authorize, in writing, a COR on contracts and orders, as appropriate. Additionally, a new section was added at FAR 1.604, Contracting officer's representative, outlining the COR's duties.

4. *Contract administration functions.* A new paragraph was added at FAR 42.302(a)(12) to require that the contracting officer determine the continuing adequacy of the contractor's

accounting system during the entire period of contract performance. Also, paragraph (a)(12) was added to the list of functions at FAR 42.302(a) that cannot be retained and that must be delegated by the contracting officer when delegating contract administration functions to a contract administration office in accordance with FAR 42.202(a).

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because section 864 affects only internal Government operations and requires the Government to establish internal guidance on the proper use and management of all contracts especially other than firm-fixed-price contracts (*e.g.,* cost-reimbursement, time-and-material, and labor-hour) and does not impose any additional requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business entities and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–50, FAR Case 2008–030) in correspondence.

IV. Paperwork Reduction Act

The changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, enacted October 14, 2008, directs that it must be implemented within 270 days from enactment. This rule is also urgent because this law requires the Inspector General to conduct a compliance review for each executive agency, one year after the regulations have been promulgated, on the use of cost-reimbursement contracts and include the results of their findings in the IG's next semiannual report. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 1.602–2 by adding paragraph (d) to read as follows:

1.602–2 Responsibilities.

* * * * *

(d) Designate and authorize, in writing, a contracting officer's representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate. However, the contracting officer is not precluded from retaining and executing the COR duties as appropriate. *See* 7.104(e). A COR—

(1) Must be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the Office of Management and Budget memorandum entitled "The Federal Acquisition Certification for Contracting Officer Technical Representatives" dated November 26, 2007, or for DoD, DoD Regulations, as applicable;

(3) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;

(4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and

(6) Must be designated in writing, with copies furnished to the contractor and the contract administration office—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

■ 3. Amend section 1.603 by revising the section heading to read as follows:

1.603 Selection, appointment, and termination of appointment for contracting officers.

* * * * *

■ 4. Add section 1.604 to read as follows:

1.604 Contracting Officer's Representative (COR).

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (*see* 1.602–2(d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum—

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (*see* 1.602–2(d)(4)); and

(c) Documentation of COR actions taken in accordance with the delegation of authority.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 5. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition "Contracting officer's representative (COR)" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Contracting officer's representative (COR) means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

* * * * *

PART 7—ACQUISITION PLANNING

■ 6. Amend section 7.102 by adding paragraph (a)(3) to read as follows:

7.102 Policy.

(a) * * *

(3) Selection of appropriate contract type in accordance with part 16.

* * * * *

■ 7. Amend section 7.103 by—

■ a. Redesignating paragraphs (e) through (w) as paragraphs (g) through (y);

■ b. Redesignating paragraph (d) as paragraph (e);

■ c. Adding a new paragraph (d);

■ d. Revising newly redesignated paragraph (e);

■ e. Adding a new paragraph (f); and

■ f. Revising newly redesignated paragraph (j).

The added and revised text reads as follows:

7.103 Agency-head responsibilities.

* * * * *

(d) Ensuring that acquisition planners document the file to support the selection of the contract type in accordance with subpart 16.1.

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (*e.g.,* other than firm-fixed-price contracts) requiring a written acquisition plan. A written plan shall be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans may be required for firm-fixed-price contracts as appropriate.

(f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

* * * * *

(j) Reviewing and approving acquisition plans and revisions to these plans to ensure compliance with FAR requirements including 7.104 and part 16. For other than firm-fixed-price contracts, ensuring that the plan is approved and signed at least one level above the contracting officer.

* * * * *

■ 8. Amend section 7.104 by adding paragraph (e) to read as follows:

7.104 General procedures.

* * * * *

(e) The planner shall ensure that a COR is nominated by the requirements official, and designated and authorized by the contracting officer, as early as practicable in the acquisition process. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. *See* 1.602–2(d).

■ 9. Amend section 7.105 by—

■ a. Removing from the first sentence of the introductory text the words "*see* paragraph (b)(19)" and adding the words "*see* paragraph (b)(21)" in their place;

■ b. Redesignating paragraphs (b)(3) through (b)(21) as paragraphs (b)(4) through (b)(22), respectively;

■ c. Adding a new paragraph (b)(3);

■ d. Removing from newly redesignated paragraph (b)(5)(i) the words "contract type selection (*see* part 16);";

■ e. Removing from newly redesignated paragraph (b)(5)(ii)(A) the words "*see* 7.103(t)" and adding the words "*see* 7.103(v)" in its place; and

■ f. Adding paragraph (b)(5)(iv).

The added text reads as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(3) *Contract type selection.* Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, *see* 16.103(d) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (*e.g.,* complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The contracting officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

* * * * *

(5) * * *

(iv) For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract requirements, *e.g.,* contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contact because a cost history will be developed for a recurring definitive requirement.

* * * * *

PART 16—TYPES OF CONTRACTS

■ 10. Amend section 16.103 by revising paragraphs (d)(1) and (2) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or if a written acquisition plan is not required, in the contract file.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (*e.g.,* when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (*e.g.,* pre-award survey, or past performance information);

(B) The nature of the additional risks (*e.g.,* inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (*e.g.,* resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (*e.g.,* cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (*e.g.,*

complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

* * * * *

■ 11. Amend section 16.104 by—

■ a. Redesignating paragraphs (e) through (k) as paragraphs (f) through (l), respectively;

■ b. Adding a new paragraph (e);

■ c. Removing from newly redesignated paragraph (f) the words "incentives to ensure" and adding the words "incentives tailored to performance outcomes to ensure" in their place;

■ d. Removing from newly redesignated paragraph (g) the words "price adjustment terms" and adding the words "price adjustment or price redetermination clauses" in their place; and

■ e. Revising newly redesignated paragraph (i).

The added and revised text reads as follows:

16.104 Factors in selecting contract types.

* * * * *

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

* * * * *

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. *See* 42.302(a)(12).

* * * * *

■ 12. Revise section 16.301–2 to read as follows:

16.301–2 Application.

(a) The contracting officer shall use cost-reimbursement contracts only when—

(1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (*see* 7.105); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer (*see* 7.103(j) and 7.105). If a written acquisition plan is not required, the contracting officer shall document the rationale in the contract file. *See also* 16.103(d).

■ 13. Amend section 16.301–3 by revising paragraph (a) to read as follows:

16.301–3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The factors in 16.104 have been considered;

(2) A written acquisition plan has been approved and signed at least one level above the contracting officer;

(3) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(4) Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (*see* 7.104(e)) including—

(i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602–2 has been made prior to award of the contract or order; and

(ii) Appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

* * * * *

PART 32—CONTRACT FINANCING

32.1007 [Amended]

■ 14. Amend section 32.1007 by removing from paragraph (a) "(*see* 42.302(a)(12))" and adding "(*see* 42.302(a)(13))" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 15. Amend section 42.302 by—

■ a. Removing from the introductory text of paragraph (a) the words "paragraphs (a)(5), (a)(9), and (a)(11)" and adding the words "paragraphs (a)(5), (a)(9), (a)(11), and (a)(12)" in their place;

■ b. Redesignating paragraphs (a)(12) through (a)(26) as paragraphs (a)(13) through (a)(27); and

■ c. Adding a new paragraph (a)(12) to read as follows:

42.302 Contract administration functions.

(a) * * *

(12) Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance. The adequacy of the contractor's accounting system and its associated internal control system, as well as contractor compliance with the Cost Accounting Standards (CAS), affect the quality and validity of the contractor data upon which the Government must rely for its management oversight of the contractor and contract performance.

* * * * *

PART 50—EXTRAORDINARY CONTRACTURAL ACTIONS AND THE SAFETY ACT

50.205–1 [Amended]

■ 16. Amend section 50.205–1 by removing from the first sentence in paragraph (b) the words "(*see* FAR 7.105(b)(19)(v))" and adding the words "(*see* 7.105(b)(20)(v))" in their place.

[FR Doc. 2011–5552 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 16, 18, and 38

[FAC 2005–50; FAR Case 2007–012; Item II; Docket 2011–0081, Sequence 01]

RIN 9000–AL93

Federal Acquisition Regulation; Requirements for Acquisitions Pursuant to Multiple-Award Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 863, entitled "Requirements for Purchase of Property and Services Pursuant to Multiple-Award Contracts," mandates enhanced competition for orders placed under multiple-award contracts, including GSA's Federal Supply Schedules (FSS). If an individual order over the simplified acquisition threshold does not follow the section 863 competitive procedures, section 863 requires that a notice of, and the determination to waive competition for, the order be published in FedBizOpps within 14 days after award. These FAR changes support the Administration's commitment to strengthened competition and increased transparency.

DATES: *Effective Date:* May 16, 2011.

Applicability Date: (1) The changes in this rule apply to solicitations issued and contracts awarded on or after May 16, 2011 (*see* FAR 1.108(d)(1)). (2) The changes also apply to orders issued on or after the effective date of this regulation, without regard to whether the underlying contracts were awarded before May 16, 2011. (3) The changes apply to Blanket Purchase Agreements (BPAs) established under FSS contracts on or after May 16, 2011. (4) The ordering procedures for BPAs in FAR 8.405–3(c) are mandatory for BPAs established under FSS contracts on or after May 16, 2011 and discretionary for BPAs established under FSS contracts prior to the effective date.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–50, FAR Case 2007–012, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2007–012" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2007–012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2007–012" on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–50, FAR Case 2007–012, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2007–012.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

This interim rule amends the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) enacted on October 14, 2008. Section 863 mandated the development and publication of regulations in the FAR to enhance competition for the award of orders placed under multiple-award contracts. Section 863 specified enhancements that include—

- Strengthening competition rules for placing orders under FSS and other multiple-award contracts to ensure both the provision of fair notice to contract holders and the opportunity for contract holders to respond (similar to the procedures implemented for section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107)); and
- Providing notice in FedBizOpps of certain orders placed under multiple-award contracts, including FSS.
- The legislation builds on recommendations offered by the Acquisition Advisory Panel, which was established by section 1423 of the Services Acquisition Reform Act of 2003, (Pub. L. 108–136). The final report of the Acquisition Advisory Panel, issued in January 2007, can be accessed at *http://acquisition.gov/comp/aap/index.html.*

For each individual purchase of property or services in excess of the simplified acquisition threshold (SAT) that is made under a multiple-award contract, section 863 requires the provision of fair notice of intent to make a purchase (including a description of the work to be performed and the basis on which the selection will be made) to all contractors offering such property or services under the multiple-award contract. In addition, the statute requires that all contractors responding to the notice be afforded a fair opportunity to make an offer and have that offer fairly considered by the purchasing official. A notice may be provided to fewer than all contractors offering such property or services under a multiple-award contract if the notice is provided to as many contractors as practicable. When notice is provided to fewer than all the contractors, a purchase cannot be made unless—

- Offers were received from at least three qualified contractors; or
- A contracting officer determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

These requirements may be waived on the basis of a justification, including a written determination identifying the statutory basis for an exception to fair opportunity, that is prepared and approved at the levels specified in the FAR.

In considering regulatory changes to strengthen the use of competition in task- and delivery-order contracts, the Defense Acquisition Regulations Council and Civilian Agency Acquisition Council (Councils) sought to develop amendments that take increased and more effective advantage of competition, consistent with the general competition principles addressed in the President's March 4, 2009, Memorandum on Government Contracting (available at *http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government*), while still preserving the efficiencies of these contract vehicles. For this reason, the

rule addresses several issues that are not expressly addressed in section 863, such as competition for the establishment and placement of orders under FSS BPAs. The changes, however, are not applicable to BPAs awarded pursuant to FAR part 13 or to orders awarded under FAR procedures other than those in FAR subparts 8.4 and 16.5.

In particular, this interim rule—

• Revises the "fair opportunity" competition requirements in FAR 16.505(b) (applicable to multiple-award task- and delivery-order contracts, other than FSS contracts) to require that, for orders exceeding the SAT, agencies (i) provide fair notice of intent to make the purchase to all contract holders, (ii) afford all contract holders a fair opportunity to submit offers and have those offers fairly considered, and (iii) justify an exception to fair opportunity with appropriate documentation and approval;

• Amends the procedures for ordering supplies and services under FSS contracts at FAR 8.405–1 and 8.405–2, when the order is above the SAT, to require that ordering activities—

—Receive at least three quotes, as a general matter, that can fulfill the requirement and fairly consider all quotes received; and

—Document the file to explain efforts made to obtain quotes from at least three FSS contractors that can fulfill the requirements if fewer than three quotes were received and e-Buy, an electronic FSS requirements posting tool, was not used;

• Establishes new competition procedures at FAR 8.405–3 for creating BPAs under FSS contracts and placing orders under the BPAs that—

—Create a preference for multiple-award BPAs, rather than single-award BPAs, generally modeled after the preference for multiple-award task- and delivery-order contracts in FAR 16.505;

—Allow single-award BPAs if (i) the agency considered multiple awards and the decision to make a single award is explained and documented in the acquisition plan and contract file, (ii) the estimated value of the BPA does not exceed $100 million (including any options), with limited exception, and (iii) the ordering activity prepares a written determination before exercising an option and secures the approval of its competition advocate;

—Establish competition requirements for placing orders under multiple-award BPAs that require the ordering activity to (i) provide a Request for Quotation (RFQ) to all BPA holders offering the required supplies or services under the BPA for orders over the SAT that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made, (ii) afford all BPA holders an opportunity to submit a quote, (iii) fairly consider all responses received, and (iv) make award in accordance with the selection procedures; and

—Restrict the circumstances when a BPA may be established based on a limited-source justification (*see also* FAR 8.405–6(a)(1)(i));

• Amends the contract award synopsis provisions at FAR 5.301 (with conforming changes at FAR 5.406, 8.405–6(a)(2), and 16.505(b)(2)(ii)(D)) to require publication and posting of actions supported by exceptions to fair opportunity at FAR 16.505(b)(2) for non-FSS task- and delivery-order contracts and limited-sources justifications at FAR 8.405–6 for FSS contracts, except when disclosure would compromise national security or create other security risks;

• Clarifies that ordering activities may seek a price reduction under FSS contracts at any time and that they shall seek a price reduction when placing an order or establishing a BPA that exceeds the SAT (*see* FAR 8.405–4); and

• Adds language explaining that the protest procedures found at FAR subpart 33.1 are applicable to the issuance of an order or the establishment of a BPA against an FSS contract.

Additional background on changes to strengthen competition rules under GSA's FSS is provided in the following section B.

B. Strengthening Competition Rules Under FSS

1. *FAR 8.405–1, Ordering procedures for supplies, and services not requiring a statement of work.*

Current language at FAR 8.405–1 provides competition guidance and ordering procedures for three categories of purchases:

• Orders at or below the micro-purchase threshold.

• Orders exceeding the micro-purchase threshold but not exceeding the maximum-order threshold identified in the schedule contract.

• Orders exceeding the maximum-order threshold.

This interim rule retains three categories of purchases but no longer employs the maximum-order threshold limitation as a point of reference to define the boundaries of the categories. Instead, the second and third categories are bounded by the SAT. This change is required to ensure rules comply with the section 863 competition requirements. With respect to the competition requirements, existing requirements are retained in some instances and changed in others, as follows:

a. *Orders at or below the micro-purchase threshold.* Because the competition standards under section 863 begin at the SAT, the Councils agreed that no changes were needed to the procedures for orders at or below the micro-purchase threshold, *i.e.,* orders may be placed with any FSS contractor that can meet the agency's needs.

b. *Orders exceeding the micro-purchase threshold but not exceeding the SAT.* In this category, an ordering activity may place an order with the FSS contractor that represents the best value after surveying at least three FSS contractors through GSA Advantage! by reviewing the catalogs or price lists of at least three FSS contractors, or by requesting quotations from at least three schedule contractors.

c. *Orders exceeding the SAT.* This interim rule changes competition requirements in this category to conform to the section 863 competition standards. The ordering activity must provide the RFQ to as many FSS contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirement and further ensure that all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ. The terminology set forth in the statute is tailored to conform with the process under which the FSS Program operates. For example, section 863 uses language such as "each individual purchase of property or services," whereas this rule uses the term "orders." The ordering procedures at FAR 8.405–1(d) for orders exceeding the maximum-order threshold have been deleted because the section 863 competition standard supersedes those procedures. In addition, when an order exceeds the SAT, an ordering activity is now required to document the best-value determination with evidence of compliance with the ordering procedures. For example, there should be documentation to show whether at least three quotes were received. If fewer than three quotes were received, and e-Buy was not used (*see* discussion on e-Buy at paragraph 4. of this section), then the contracting officer must clearly explain, in the file documentation, the efforts made to obtain quotes from at

least three FSS contractors that can fulfill the requirement.

2. *FAR 8.405–2, Ordering procedures for services requiring a statement of work.*

a. *Orders at or below the micro-purchase threshold.* The rules for orders at or below the micro-purchase threshold remain unchanged.

b. *Orders exceeding the micro-purchase threshold but not exceeding the SAT.* Consistent with current FAR requirements for orders of this size, the ordering activity must provide the RFQ (including the statement of work and evaluation criteria) to at least three FSS contractors that offer services that will meet the agency's needs. Otherwise, the ordering activity contracting officer must document the circumstances for restricting consideration of fewer than three schedule contractors that can fulfill the requirement, based on one of the reasons at FAR 8.405–6(a) and select the corresponding reason in FPDS.

c. *Orders exceeding the SAT.* This interim rule adds the new competition standards in accordance with section 863 for orders over the SAT that do not require statements of work. Here, the ordering activity must include the statement of work and evaluation criteria (*e.g.,* experience and past performance) when providing the RFQ to FSS contractors that offer services that will meet the agency's needs or posting the RFQ on e-Buy.

3. *FAR 8.405–3, Blanket Purchase Agreements (BPAs).* This interim rule consolidates FSS BPA procedures into one subsection, FAR 8.405–3, and makes a number of changes to improve competition in the establishment of FSS BPAs and the placement of orders under such BPAs. (The Councils note that the rule addresses only FSS BPAs. This interim rule is not applicable to BPAs established under FAR part 13.) Although section 863 does not specifically address the treatment of BPAs established under FSS contracts, the Councils, after careful deliberation, decided to apply the basic competition procedures of section 863 to the establishment of BPAs under FSS contracts. Accordingly, if the anticipated value of the BPA is over the SAT, the ordering activity either must seek quotes from as many schedule contractors as practicable to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements or post the RFQ on e-Buy, unless these requirements are waived on the basis of a limited-sources justification that is prepared and approved in accordance with FAR 8.405–6.

a. *Single-award BPAs.* To encourage and facilitate competition when placing orders under BPAs, this interim rule establishes a preference for multiple-award BPAs rather than single-award BPAs. The ordering activity must consider several factors, including the benefits of on-going competition, when deciding how many BPAs are appropriate and document the decision in the acquisition plan or BPA file. A single-award BPA may be established only under certain circumstances. To further encourage the use of multiple-award BPAs, the Councils added a limitation that no single-award BPA with an estimated value exceeding $100 million (including any options) may be awarded unless, under certain circumstances, the head of the agency makes a determination in writing, and the Councils limited the duration of single-award BPAs to one year. While a single-award BPA may include up to four one-year options, the exercise of each option will now require a written determination approved by the ordering activity competition advocate. This determination, which is required for all BPAs at least once a year, must address whether (1) the FSS contract upon which the BPA was established is still in effect; (2) the BPA still represents the best value; and (3) the estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

b. *Orders under multiple-award BPAs.* This interim rule structures the ordering procedures for multiple-award BPAs according to dollar thresholds, *i.e.,* orders under the micro-purchase threshold, orders over the micro-purchase threshold but under the SAT, and orders over the SAT. Orders at or below the micro-purchase threshold may be placed with any BPA holder that can meet the agency needs.

When an order is over the micro-purchase threshold but less than the SAT, the ordering activity must provide each multiple-award BPA holder a fair opportunity to be considered unless one of the exceptions at FAR 8.405–6(a)(1)(i) applies. The ordering activity contracting officer must document the circumstances when limiting consideration to less than all the multiple-award BPA holders.

For an order exceeding the SAT placed under a multiple-award BPA, the ordering activity shall provide an RFQ to all BPA holders offering the required supplies or services under the multiple-award BPA. The RFQ must include a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made. The ordering activity shall: (1) Afford all BPA holders an opportunity to submit a quote; (2) fairly consider all responses received; and (3) make award in accordance with the selection procedures. The ordering activity must place orders using these procedures unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405–6.

The Councils note that the new competition standard for multiple-award BPAs is not applicable to orders placed under BPAs that were established on or before the effective date of this interim rule.

4. *E-Buy.* The Councils considered various methods for providing fair notice to all FSS contractors. FAR 8.402 currently requires the use of e-Buy, an electronic FSS requirements-posting tool, only when an order contains brand-name specifications. The Councils agreed that the use of e-Buy provides contracting officers with an efficient method of posting requirements to reach the widest audience of offerors that can fulfill the requirements, as well as a swift and easy means for contractors to submit responsive and responsible quotes. Therefore, this interim rule amends FAR 8.402(d) to identify e-Buy as one medium for providing fair notice while also providing offerors with a voluntary quoting system. The Councils agreed that posting the RFQ on e-Buy allows all FSS holders with the referenced FSS Special Item Number (SIN) to view the posting, thus satisfying the requirements for fair notice when placing an order or establishing a BPA under FAR subpart 8.4.

As explained previously in this section, the procedures for ordering supplies and services under FSS contracts (FAR 8.405–1 and 8.405–2) when the order is above the SAT, have been revised to require the receipt of at least three quotes that can fulfill the requirement and also require that all quotes received must be fairly considered. However, if e-Buy is used and fewer than three quotes are received, section 863 competition requirements are considered to have been met and the contracting officer may proceed with award. If e-Buy is not used and fewer than three quotes are received from schedule contractors that can fulfill the requirements, the contracting officer must document a determination that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so.

5. *Other FSS ordering issues.* This interim rule retains current FAR

limitations that restrict the use of brand-name specifications to situations where a particular brand name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs. This interim rule also retains the list of factors to be considered when determining best value, such as past performance, special features required for effective program performance, delivery terms, and environmental and energy efficiency considerations, but adds a cross reference to FAR 8.405–4 to emphasize that ordering activities should seek price reductions when considering price.

C. Strengthening Competition Requirements for Task and Delivery Orders in FAR Subpart 16.5, Indefinite-Delivery Contracts

The changes made by this interim rule to FAR subpart 16.5 are fully addressed in section I.1. Overview, of this **Federal Register** document.

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not revise or change existing regulations pertaining specifically to small business concerns seeking Government contracts. DoD, GSA, and NASA believe the rule will benefit small entities by encouraging and enhancing competition.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–50, FAR Case 2007–012), in correspondence.

IV. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) was enacted on October 14, 2008. Section 863 required the FAR to be revised no later than one year after enactment, or October 14, 2009. Absent implementation of this interim rule, section 863 will not be implemented in the FAR and agencies will not be compliant with this provision. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 8, 16, 18, and 38

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 8, 16, 18, and 38 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 8, 16, 18, and 38 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Revise section 5.301 to read as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in 5.003, contracting officers must synopsize through the GPE the following:

(1) Contract awards exceeding $25,000 that are—

(i) Covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (*see* subpart 25.4); or

(ii) Likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(2) Certain contract actions greater than the simplified acquisition threshold as follows—

(i) Federal Supply Schedule (FSS) orders or Blanket Purchase Agreements supported by a limited-source justification (excluding brand name) in accordance with 8.405–6; or

(ii) Task or delivery orders awarded without providing fair opportunity in accordance with 16.505(b)(2).

(3) A notice is not required under this section if the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security.

(b) A notice is not required under paragraph (a)(1) of this section if—

(1) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(2) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219);

(3) The contract action is an order placed under subpart 16.5 or 8.4, except *see* paragraph (a)(2) of this section;

(4) The award is made for perishable subsistence supplies;

(5) The award is for utility services, other than telecommunications services, and only one source is available;

(6) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold;

(ii) Was made through a means where access to the notice of proposed contract action was provided through the GPE; and

(iii) Permitted the public to respond to the solicitation electronically; or

(7) The award is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302–3.

(c) With respect to acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement, contracting officers must submit synopses in sufficient time to permit

their publication in the GPE not later than 60 days after award.

(d) Posting is required of the justifications for—

(1) Contracts awarded using other than full and open competition in accordance with 6.305;

(2) FSS orders or Blanket Purchase Agreements with an estimated value greater than the simplified acquisition threshold and supported by a limited-sources justification (*see* 8.405–6(a)); or

(3) Task or delivery orders greater than the simplified acquisition threshold and awarded without providing for fair opportunity in accordance with 16.505(b)(2)(ii)(B) and (D).

■ 3. Revise section 5.406 to read as follows:

5.406 Public disclosure of justification documents for certain contract actions.

(a) Justifications and approvals for other than full and open competition must be posted in accordance with 6.305.

(b) Limited-source justifications (excluding brand name) for FSS orders or blanket purchase agreements with an estimated value greater than the simplified acquisition threshold must be posted in accordance with 8.405–6(a)(2).

(c) Justifications for task or delivery orders greater than the simplified acquisition threshold and awarded without providing for fair opportunity must be posted in accordance with 16.505(b)(2)(ii)(D).

5.705 [Amended]

■ 4. Amend section 5.705 by removing from the introductory paragraph "5.301(b)(3) through (8)" and adding "5.301(b)(2) through (7)" in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 5. Amend section 8.402 by revising paragraph (d) to read as follows:

8.402 General.

* * * * *

(d)(1) *e-Buy,* GSA's electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. E-Buy allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Posting an RFQ on e-Buy—

(i) Is one medium for providing fair notice to all schedule contractors offering such supplies and services as required by 8.405–1, 8.405–2, and 8.405–3; and

(ii) Is required when an order contains brand-name specifications (*see* 8.405–6).

(2) Ordering activities may access e-Buy at *http://www.ebuy.gsa.gov.* For more information or assistance on either GSA Advantage! or e-Buy, contact GSA at Internet e-mail address *gsa.advantage@gsa.gov.*

* * * * *

■ 6. Amend section 8.404 by—

■ a. Revising the last sentence in paragraph (a);

■ b. Redesignating paragraph (e) as paragraph (g);

■ c. Adding new paragraphs (e) and (f); and

■ d. Revising the newly redesignated paragraph (g).

The revised and added text reads as follows:

8.404 Use of Federal Supply Schedules.

(a) * * * Therefore, when establishing a BPA (as authorized by 13.303–2(c)(3)), or placing orders under Federal Supply Schedule contracts using the procedures of 8.405, ordering activities shall not seek competition outside of the Federal Supply Schedules or synopsize the requirement; but *see* paragraph (g) of this section.

* * * * *

(e) The procedures under subpart 33.1 are applicable to the issuance of an order or the establishment of a BPA against a schedule contract.

(f) If the ordering activity issues an RFQ, the ordering activity shall provide the RFQ to any schedule contractor that requests a copy of it.

(g)(1) Ordering activities shall publicize contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5):

(i) Notices of proposed MAS orders (including orders issued under BPAs) that are for "informational purposes only" exceeding $25,000 shall follow the procedures in 5.704 for posting orders.

(ii) Award notices for MAS orders (including orders issued under BPAs) shall follow the procedures in 5.705.

(2) When an order is awarded or a Blanket Purchase Agreement is established with an estimated value greater than the simplified acquisition threshold and supported by a limited-source justification at 8.405–6(a), the ordering activity contracting officer must—

(i) Publicize the action (*see* 5.301); and

(ii) Post the justification in accordance with 8.405–6(a)(2).

■ 7. Amend section 8.405 by adding a sentence to the end of the paragraph.

8.405 Ordering procedures for Federal Supply Schedules.

* * * For establishing BPAs and for orders under BPAs *see* 8.405–3.

■ 8. Amend section 8.405–1 by—

■ a. Adding to the end of paragraph (a) "For establishing BPAs and for orders under BPAs *see* 8.405–3."

■ b. Revising paragraphs (c) and (d);

■ c. Redesignating paragraph (e) as paragraph (g);

■ d. Adding new paragraphs (e) and (f); and

■ e. Revising newly redesignated paragraph (g).

The added and revised text reads as follows:

8.405–1 Ordering procedures for supplies, and services not requiring a statement of work.

* * * * *

(c) *Orders exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.* Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering activity shall:

(1) Consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors (*see* 8.405–5); or

(2) Document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons at 8.405–6(a).

(d) *For proposed orders exceeding the simplified acquisition threshold.* (1) Each order shall be placed on a competitive basis in accordance with (d)(2) and (3) of this section, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405–6.

(2) The ordering activity contracting officer shall provide an RFQ that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made (*see* 8.405–1(f)).

(3) The ordering activity contracting officer shall—

(i) Post the RFQ on e-Buy to afford all schedule contractors offering the required supplies or services under the appropriate multiple award schedule(s) an opportunity to submit a quote; or

(ii) Provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to

reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirement, the contracting officer shall prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors.

(4) The ordering activity contracting officer shall ensure that all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ.

(e) When an order contains brand-name specifications, the contracting officer shall post the RFQ on e-Buy along with the justification or documentation as required by 8.405–6.

(f) In addition to price (*see* 8.404(d) and 8.405–4), when determining best value, the ordering activity may consider, among other factors, the following:

(1) Past performance.

(2) Special features of the supply or service required for effective program performance.

(3) Trade-in considerations.

(4) Probable life of the item selected as compared with that of a comparable item.

(5) Warranty considerations.

(6) Maintenance availability.

(7) Environmental and energy efficiency considerations.

(8) Delivery terms.

(g) *Minimum documentation.* The ordering activity shall document—

(1) The schedule contracts considered, noting the contractor from which the supply or service was purchased;

(2) A description of the supply or service purchased;

(3) The amount paid;

(4) When an order exceeds the simplified acquisition threshold, evidence of compliance with the ordering procedures at 8.405–1(d); and

(5) The basis for the award decision.

■ 9. Amend section 8.405–2 by—

■ a. Adding a sentence to the end of paragraph (a);

■ b. Removing from the first sentence in paragraph (b) "include the work" and adding "include a description of work" in its place;

■ c. Revising the heading to paragraph (c)(2), and paragraphs (c)(2)(ii), (c)(2)(iii) and (c)(3);

■ d. Revising the third sentence of paragraph (d);

■ e. Removing from the end of paragraph (e)(6) the word "and";

■ f. Removing from the end of paragraph (e)(7)(ii) "order." and adding "order; and" in its place; and

■ g. Adding paragraph (e)(8).

The revised and added text reads as follows:

8.405–2 Ordering procedures for services requiring a statement of work.

(a) * * * "For establishing BPAs and for orders under BPAs *see* 8.405–3."

* * * * *

(c) * * *

(2) For orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold.

* * * * *

(ii) The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs or document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons at 8.405–6(a).

(iii) The ordering activity shall specify the type of order (*i.e.,* firm-fixed-price, labor-hour) for the services identified in the statement of work. The contracting officer should establish firm-fixed-prices, as appropriate.

(3) *For proposed orders exceeding the simplified acquisition threshold.* In addition to meeting the requirements of 8.405–2(c)(2)(i) and (iii), the following procedures apply:

(i) Each order shall be placed on a competitive basis in accordance with (c)(3)(ii) and (iii) of this section, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405–6.

(ii) The ordering activity contracting officer shall provide an RFQ that includes a statement of work and the evaluation criteria.

(iii) The ordering activity contracting officer shall—

(A) Post the RFQ on e-Buy to afford all schedule contractors offering the required services under the appropriate multiple-award schedule(s) an opportunity to submit a quote; or

(B) Provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the contracting officer shall prepare a written determination to explain that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors.

(C) Ensure all quotes received are fairly considered and award is made in accordance with the evaluation criteria in the RFQ.

(d) * * * Place the order with the schedule contractor that represents the best value (*see* 8.404(d) and 8.405–4).

* * *

(e) * * *

(8) When an order exceeds the simplified acquisition threshold, evidence of compliance with the ordering procedures at 8.405–2(c).

■ 10. Revise section 8.405–3 to read as follows:

8.405–3 Blanket purchase agreements (BPAs).

(a) *Establishment.* (1) Ordering activities may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. Ordering activities shall establish the BPA with the schedule contractor(s) that can provide the supply or service that represents the best value.

(2) In addition to price (*see* 8.404(d) and 8.405–4), when determining best value, the ordering activity may consider, among other factors, the following:

(i) Past performance.

(ii) Special features of the supply or service required for effective program performance.

(iii) Trade-in considerations.

(iv) Probable life of the item selected as compared with that of a comparable item.

(v) Warranty considerations.

(vi) Maintenance availability.

(vii) Environmental and energy efficiency considerations.

(viii) Delivery terms.

(3)(i) The ordering activity contracting officer shall, to the maximum extent practicable, give preference to establishing multiple-award BPAs, rather than establishing a single-award BPA.

(ii) No single-award BPA with an estimated value exceeding $103 million (including any options), may be awarded unless the head of the agency determines in writing that—

(A) The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work;

(B) The BPA provides only for firm-fixed priced orders for—

(*1*) Products with unit prices established in the BPA; or

(*2*) Services with prices established in the BPA for specific tasks to be performed;

(C) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(D) It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.

(iii) The requirement for a determination for a single-award BPA greater than $103 million is in addition to any applicable requirement for a limited-source justification at 8.405–6. However, the two documents may be combined into one document.

(iv) In determining how many multiple-award BPAs to establish or that a single-award BPA is appropriate, the contracting officer should consider the following factors and document the decision in the acquisition plan or BPA file:

(A) The scope and complexity of the requirement(s);

(B) The benefits of on-going competition and the need to periodically compare multiple technical approaches or prices;

(C) The administrative costs of BPAs; and

(D) The technical qualifications of the schedule contractor(s).

(4) BPAs shall address the frequency of ordering, invoicing, discounts, requirements (*e.g.,* estimated quantities, work to be performed), delivery locations, and time.

(5) When establishing multiple-award BPAs, the ordering activity shall specify the procedures for placing orders under the BPAs in accordance with 8.405–3(c)(2).

(6) Establishment of a multi-agency BPA against a Federal Supply Schedule contract is permitted if the multi-agency BPA identifies the participating agencies and their estimated requirements at the time the BPA is established.

(7) *Minimum documentation.* The ordering activity contracting officer shall include in the BPA file documentation the—

(i) Schedule contracts considered, noting the contractor to which the BPA was awarded;

(ii) Description of the supply or service purchased;

(iii) Price;

(iv) Required justification for a limited-source BPA (*see* 8.405–6), if applicable;

(v) Determination for a single-award BPA exceeding $100 million, if applicable (*see* (a)(3)(ii));

(vi) Documentation supporting the decision to establish multiple-award BPAs or a single-award BPA (*see* (a)(3)(iv));

(vii) Evidence of compliance with paragraph (b) of this section, for competitively awarded BPAs, if applicable; and

(viii) *Basis for the award decision.* This should include the evaluation methodology used in selecting the contractor, the rationale for any tradeoffs in making the selection, and a price reasonableness determination for services requiring a statement of work.

(b) *Competitive procedures for establishing a BPA.* This paragraph applies to the establishment of a BPA, in addition to applicable instructions in paragraph (a).

(1) *For supplies, and for services not requiring a statement of work.* The procedures of this paragraph apply when establishing a BPA for supplies and services that are listed in the schedule contract at a fixed price for the performance of a specific task, where a statement of work is not required (*e.g.,* installation, maintenance, and repair).

(i) *If the estimated value of the BPA does not exceed the simplified acquisition threshold.* (A) The ordering activity shall:

(*1*) Consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors (*see* 8.405–5); or

(*2*) Document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons at 8.405–6(a).

(B) The ordering activity shall establish the BPA with the schedule contractor(s) that can provide the best value.

(ii) *If the estimated value of the BPA exceeds the simplified acquisition threshold.* The ordering activity contracting officer:

(A) Shall provide an RFQ that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made.

(B)(*1*) Shall post the RFQ on e-Buy to afford all schedule contractors offering the required supplies or services under the appropriate multiple award schedule(s) an opportunity to submit a quote; or

(*2*) Shall provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the contracting officer shall prepare a written determination explaining that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors.

(C) Shall ensure all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ. After seeking price reductions (*see* 8.405–4), establish the BPA with the schedule contractor(s) that provides the best value.

(D) The BPA must be established in accordance with paragraphs (b)(1)(ii)(B) and (C) of this section, unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405–6.

(2) *For services requiring a statement of work.* This applies when establishing a BPA that requires services priced at hourly rates, as provided by the schedule contract. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

(i) *Statements of Work (SOWs).* The ordering activity shall develop a statement of work. All Statements of Work shall include a description of work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (*e.g.,* security clearances, travel, and special knowledge). To the maximum extent practicable, agency requirements shall be performance-based statements (*see* subpart 37.6).

(ii) *Type-of-order preference.* The ordering activity shall specify the order type (*i.e.,* firm-fixed price, labor-hour) for the services identified in the statement of work. The contracting officer should establish firm-fixed prices, as appropriate.

(iii) *Request for Quotation procedures.* The ordering activity must provide a RFQ, which includes the statement of work and evaluation criteria (*e.g.,* experience and past performance), to schedule contractors that offer services that will meet the agency's needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy (*see* 8.402(d)).

(iv) *If the estimated value of the BPA does not exceed the simplified acquisition threshold.* The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three

schedule contractors that offer services that will meet the agency's needs.

(v) *If estimated value of the BPA exceeds the simplified acquisition threshold.* The ordering activity contracting officer—

(A) Shall post the RFQ on e-Buy to afford all schedule contractors offering the required supplies or services under the appropriate multiple-award schedule an opportunity to submit a quote; or

(B) Shall provide the RFQ, which includes the statement of work and evaluation criteria, to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the contracting officer shall document the file. The contracting officer shall prepare a written determination explaining that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three schedule contractors.

(vi) The ordering activity contracting officer shall ensure all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform, and for determining that the proposed price is reasonable.

(vii) The BPA must be established in accordance with paragraph (b)(2)(iv) or (v), and with paragraph (b)(2)(vi) of this section, unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405–6.

(viii) The ordering activity contracting officer shall establish the BPA with the schedule contractor(s) that represents the best value (*see* 8.404(d) and 8.405–4).

(3) After award, ordering activities should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

(c) *Ordering from BPAs.* The procedures in this paragraph (c) are not required for BPAs established on or before May 16, 2011. However, ordering activities are encouraged to use the procedures for such BPAs.

(1) *Single-award BPA.* If the ordering activity establishes a single-award BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple-award BPAs.* (i) *Orders at or below the micro-purchase threshold.* The ordering activity may place orders at or below the micro-purchase threshold with any BPA holder that can meet the agency needs. The ordering activity should attempt to distribute any such orders among the BPA holders.

(ii) *Orders exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.* (A) The ordering activity must provide each multiple-award BPA holder a fair opportunity to be considered for each order exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold unless one of the exceptions at 8.405–6(a)(1)(i) applies.

(B) The ordering activity need not contact each of the multiple-award BPA holders before placing an order if information is available to ensure that each BPA holder is provided a fair opportunity to be considered for each order.

(C) The ordering activity contracting officer shall document the circumstances when restricting consideration to less than all multiple-award BPA holders offering the required supplies and services.

(iii) *Orders exceeding the simplified acquisition threshold.* (A) The ordering activity shall place an order in accordance with paragraphs (c)(2)(iii)(A)(*1*), (*2*) and (*3*) of this paragraph, unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405–6. The ordering activity shall—

(*1*) Provide an RFQ to all BPA holders offering the required supplies or services under the multiple-award BPAs, to include a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made;

(*2*) Afford all BPA holders responding to the RFQ an opportunity to submit a quote; and

(*3*) Fairly consider all responses received and make award in accordance with the selection procedures.

(B) The ordering activity shall document evidence of compliance with these procedures and the basis for the award decision.

(3) *BPAs for hourly-rate services.* If the BPA is for hourly-rate services, the ordering activity shall develop a statement of work for each order covered by the BPA. Ordering activities should place these orders on a firm-fixed price basis to the maximum extent practicable. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

(d) *Duration of BPAs.* (1) Multiple-award BPAs generally should not exceed five years in length, but may do so to meet program requirements.

(2) A single-award BPA shall not exceed one year. It may have up to four one-year options. *See* paragraph (e) of this section for requirements associated with option exercise.

(3) Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.

(e) *Review of BPAs.* (1) The ordering activity contracting officer shall review the BPA and determine in writing, at least once a year (*e.g.,* at option exercise), whether—

(i) The schedule contract, upon which the BPA was established, is still in effect;

(ii) The BPA still represents the best value (*see* 8.404(d)); and

(iii) Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

(2) The determination shall be included in the BPA file documentation.

(3) If a single-award BPA is established, the ordering activity contracting officer's annual determination must be approved by the ordering activity's competition advocate prior to the exercise of an option to extend the term of the BPA.

■ 11. Revise section 8.405–4 to read as follows:

8.405–4 Price reductions.

Ordering activities may request a price reduction at any time before placing an order, establishing a BPA, or in conjunction with the annual BPA review. However, the ordering activity shall seek a price reduction when the order or BPA exceeds the simplified acquisition threshold. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order or BPA.

■ 12. Revise section 8.405–6 to read as follows:

8.405–6 Limiting sources.

Orders placed or BPAs established under Federal Supply Schedules are exempt from the requirements in part 6. However, an ordering activity must justify its action when restricting

consideration in accordance with paragraphs (a) or (b) of this section—

(a) *Orders or BPAs exceeding the micro-purchase threshold based on a limited sources justification.* (1) *Circumstances justifying limiting the source.* (i) For a proposed order or BPA with an estimated value exceeding the micro-purchase threshold not placed or established in accordance with the procedures in 8.405–1, 8.405–2, or 8.405–3, the only circumstances that may justify the action are—

(A) An urgent and compelling need exists, and following the procedures would result in unacceptable delays;

(B) Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or

(C) In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

(ii) *See* 8.405–6(c) for the content of the justification for an order or BPA exceeding the simplified acquisition threshold.

(2) *Posting.* (i) Within 14 days after placing an order or establishing a BPA exceeding the simplified acquisition threshold that is supported by a limited-sources justification permitted under any of the circumstances under paragraph (a)(1) of this section, the ordering activity shall—

(A) Publish a notice in accordance with 5.301; and

(B) Post the justification—

(*1*) At the GPE *http://www.fedbizopps.gov;*

(*2*) On the Web site of the ordering activity agency, which may provide access to the justification by linking to the GPE; and

(*3*) For a minimum of 30 days.

(ii) In the case of an order or BPA permitted under paragraph (a)(1)(i)(A) of this section, the justification shall be posted within 30 days after award.

(iii) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 "Predisclosure Notification Procedures for Confidential Commercial Information" does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a)(2)(i) and (ii) of this section.

(iv) This posting requirement does not apply when disclosure would compromise the national security (*e.g.,* would result in disclosure of classified information) or create other security risks.

(b) *Items peculiar to one manufacturer.* An item peculiar to one manufacturer can be a particular brand name, product, or a feature of a product, peculiar to one manufacturer. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer.

(1) Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(2) *Documentation.* (i) For proposed orders or BPAs with an estimated value exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer shall document the basis for restricting consideration to an item peculiar to one manufacturer.

(ii) For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold *see* paragraph (c) of this section.

(3) *Posting.* (i) The ordering activity shall post the following information along with the Request for Quotation (RFQ) to e-Buy (*http://www.ebuy.gsa.gov*):

(A) For proposed orders or BPAs with an estimated value exceeding $25,000, but not exceeding the simplified acquisition threshold, the documentation required by paragraph (b)(2)(i) of this section.

(B) For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold, the justification required by paragraph (c) of this section.

(ii) The posting requirement of paragraph (b)(3)(i) of this section does not apply when—

(A) Disclosure would compromise the national security (*e.g.,* would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(B) The nature of the file (*e.g.,* size, format) does not make it cost-effective or practicable for contracting officers to provide access through e-Buy; or

(C) The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest.

(c) *An order or BPA with an estimated value exceeding the simplified acquisition threshold.* (1) For a proposed order or BPA exceeding the simplified acquisition threshold, the requiring activity shall assist the ordering activity contracting officer in the preparation of the justification. The justification shall cite that the acquisition is conducted under the authority of the Multiple-Award Schedule Program (*see* 8.401).

(2) At a minimum, each justification shall include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a "Limited-Sources Justification."

(ii) Nature and/or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) The authority and supporting rationale (*see* 8.405–6(a)(1)(i) and (b)(1)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

(v) A determination by the ordering activity contracting officer that the order represents the best value consistent with 8.404(d).

(vi) A description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.

(vii) Any other facts supporting the justification.

(viii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

(ix) The ordering activity contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(x) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.,* verifying the Government's minimum needs or requirements or other rationale for limited sources) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(xi) For justifications under 8.405–6(a)(1), a written determination by the approving official identifying the circumstance that applies.

(d) *Justification approvals.* (1) For a proposed order or BPA with an estimated value exceeding the simplified acquisition threshold, but not exceeding $650,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order or BPA with an estimated value exceeding $650,000, but not exceeding $12.5 million, the justification must be approved by the competition advocate of the activity placing the order, or by an official named in paragraph (d)(3) or (d)(4) of this section. This authority is not delegable.

(3) For a proposed order or BPA with an estimated value exceeding $12.5 million, but not exceeding $62.5 million (or, for DoD, NASA, and the Coast Guard, not exceeding $85.5 million), the justification must be approved by—

(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS–15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (d)(4) of this section.

(4) For a proposed order or BPA with an estimated value exceeding $62.5 million (or, for DoD, NASA, and the Coast Guard, over $85.5 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

■ 13. Revise section 8.406–1 to read as follows:

8.406–1 Order placement.

(a) Ordering activities may place orders orally, except for—

(1) Supplies and services not requiring a statement of work exceeding the simplified acquisition threshold;

(2) Services requiring a statement of work (SOW); and

(3) Orders containing brand-name specifications that exceed $25,000.

(b) Ordering activities may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedule contracts.

(c) The ordering activity shall place an order directly with the contractor in accordance with the terms and conditions of the pricelists (*see* 8.402(b)). Prior to placement of the order, the ordering activity shall ensure that the regulatory and statutory requirements of the requiring agency have been applied.

(d) Orders shall include the following information in addition to any information required by the schedule contract:

(1) Complete shipping and billing addresses.

(2) Contract number and date.

(3) Agency order number.

(4) F.o.b. delivery point; *i.e.,* origin or destination.

(5) Discount terms.

(6) Delivery time or period of performance.

(7) Special item number or national stock number.

(8) A statement of work for services, when required, or a brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).

(9) Quantity and any variation in quantity.

(10) Number of units.

(11) Unit price.

(12) Total price of order.

(13) Points of inspection and acceptance.

(14) Other pertinent data; *e.g.,* delivery instructions or receiving hours and size-of-truck limitation.

(15) Marking requirements.

(16) Level of preservation, packaging, and packing.

PART 16—TYPES OF CONTRACTS

■ 14. Amend section 16.505 by—

■ a. Revising paragraph (a)(1) and the fourth sentence of paragraph (b)(1)(ii);

■ b. Redesignating paragraphs (b)(1)(iii) and (b)(1)(iv) as paragraphs (b)(1)(iv) and (b)(1)(v), respectively;

■ c. Adding a new paragraph (b)(1)(iii); and

■ d. Revising paragraphs (b)(2) and (b)(5).

The revised and added text reads as follows:

16.505 Ordering.

(a) *General.* (1) In general, the contracting officer does not synopsize orders under indefinite-delivery contracts; except *see* 16.505(a)(10) and 16.505(b)(2)(ii)(D).

* * * * *

(b) * * *

(1) * * *

(ii) * * * If the order does not exceed the simplified acquisition threshold, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. * * *

(iii) *Orders exceeding the simplified acquisition threshold.* (A) Each order exceeding the simplified acquisition threshold shall be placed on a competitive basis in accordance with paragraph (b)(1)(iii)(B) of this section, unless supported by a written determination that one of the circumstances described at 16.505(b)(2)(i) applies to the order and the requirement is waived on the basis of a justification that is prepared in accordance with 16.505(b)(2)(ii)(B);

(B) The contracting officer shall—

(*1*) Provide a fair notice of the intent to make a purchase, including a clear description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made to all contractors offering the required supplies or services under the multiple-award contract; and

(*2*) Afford all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

* * * * *

(2) *Exceptions to the fair opportunity process.* (i) The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding $3,000 unless one of the following statutory exceptions applies:

(A) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(B) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(C) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(D) It is necessary to place an order to satisfy a minimum guarantee.

(E) For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.

(ii) The justification for an exception to fair opportunity shall be in writing as specified in paragraphs (b)(2)(ii)(A) or (B) of this section.

(A) *Orders exceeding $3,000, but not exceeding the simplified acquisition threshold.* The contracting officer shall document the basis for using an exception to the fair opportunity process. If the contracting officer uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.,* in terms of scope, period of performance, or value).

(B) *Orders exceeding the simplified acquisition threshold.* As a minimum, each justification shall include the following information and be approved in accordance with paragraph (b)(2)(ii)(C) of this section:

(*1*) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for an Exception to Fair Opportunity."

(*2*) Nature and/or description of the action being approved.

(*3*) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(*4*) Identification of the exception to fair opportunity (*see* 16.505(b)(2)) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.,* in terms of scope, period of performance, or value).

(*5*) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(*6*) Any other facts supporting the justification.

(*7*) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.

(*8*) The contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(*9*) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.,* verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(*10*) A written determination by the approving official that one of the circumstances in (b)(2)(i)(A) through (E) of this section applies to the order.

(C) *Approval.* (*1*) For proposed orders exceeding the simplified acquisition threshold, but not exceeding $650,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(*2*) For a proposed order exceeding $650,000, but not exceeding $12.5 million, the justification must be approved by the competition advocate of the activity placing the order, or by an official named in paragraph (b)(2)(ii)(C)(*3*) or (*4*) of this section. This authority is not delegable.

(*3*) For a proposed order exceeding $12.5 million, but not exceeding $62.5 million (or, for DoD, NASA, and the Coast Guard, not exceeding $85.5 million), the justification must be approved by—

(*i*) The head of the procuring activity placing the order;

(*ii*) A designee who—

(*A*) If a member of the armed forces, is a general or flag officer;

(*B*) If a civilian, is serving in a position in a grade above GS–15 under the General Schedule (or in a comparable or higher position under another schedule); or

(*iii*) An official named in paragraph (b)(2)(ii)(C)(*4*) of this section.

(*4*) For a proposed order exceeding $62.5 million (or, for DoD, NASA, and the Coast Guard, over $85.5 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

(D) *Posting.* (*1*) Except as provided in paragraph (b)(2)(ii)(D)(*5*) of this section, within 14 days after placing an order exceeding the simplified acquisition threshold that does not provide for fair opportunity in accordance with 16.505(b), the contract officer shall—

(*i*) Publish a notice in accordance with 5.301; and

(*ii*) Make publicly available the justification required at (b)(2)(ii)(B) of this section.

(*2*) The justification shall be made publicly available—

(*i*) At the GPE *http://www.fedbizopps.gov;*

(*ii*) On the Web site of the agency, which may provide access to the justifications by linking to the GPE; and

(*iii*) Must remain posted for a minimum of 30 days.

(*3*) In the case of an order permitted under paragraph (b)(2)(i)(A) of this subsection, the justification shall be posted within 30 days after award of the order.

(*4*) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 "Predisclosure Notification Procedures for Confidential Commercial Information" does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (*1*) and (*3*).

(*5*) The posting requirement of this section does not apply when disclosure would compromise the national security (*e.g.,* would result in disclosure of

classified information) or create other security risks.

* * * * *

(5) *Decision documentation for orders.* (i) The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision.

(ii) The contract file shall also identify the basis for using an exception to the fair opportunity process (*see* paragraph (b)(2)).

* * * * *

PART 18—EMERGENCY ACQUISITIONS

18.105 [Amended]

■ 15. Amend section 18.105 by removing "(*See* 8.405–3(a)(4))" and adding "(*see* 8.405–3(a)(6))" in its place.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 16. Amend section 38.101 by revising the second sentence in paragraph (e) to read as follows:

38.101 General.

* * * * *

(e) * * * The requirements of parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule solicitation and, generally, do not apply to orders and BPAs placed under resulting schedule contracts (except *see* 8.404).

[FR Doc. 2011–5553 Filed 3–15–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 15, and 19

[FAC 2005–50; FAR Case 2009–038; Item III; Docket 2010–0095, Sequence 1]

RIN 9000–AL55

Federal Acquisition Regulation; Justification and Approval of Sole-Source 8(a) Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010. This FAR change encourages agencies to maximize the effective use of competition by making certain that the proper Justification and Approval (J&A) is obtained prior to award of 8(a) sole-source contracts over $20 million, as required by section 811.

DATES: *Effective Date:* March 16, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–50, FAR Case 2009–038, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–038" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009–038." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–038" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–50, FAR Case 2009–038, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, at (202) 501–2658, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2009–038.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR, to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), enacted October 28, 2009. Section 811 requires a J&A prior to awarding a sole-source contract in an amount over $20 million under the 8(a) program (15 U.S.C. 637(a)). This written J&A must be approved by an appropriate official and, after award, made public. Authorized by 15 U.S.C. 637(a), the 8(a) program enables contract awards to be made to small business concerns determined eligible for the 8(a) program by the Small Business Administration (SBA).

The requirement for a J&A is not a ceiling or a "cap" on sole-source awards over $20 million for 8(a) contractors. The statute requires execution of a J&A documenting the reasons for making the award on a sole-source basis rather than competing among the small businesses in the 8(a) program. Prior to the enactment of section 811, a sole-source award of a new contract made using the 8(a) contracting authority did not require a J&A, regardless of the dollar value, and the new statute does not institute any requirement for a J&A for sole-source 8(a) awards that are less than or equal to $20 million.

II. Discussion and Analysis

Section 811 became effective on the date of enactment, October 28, 2009. Section 811 addresses requirements for the J&A of sole-source contracts over $20 million under the 8(a) small-business development program.

The Federal Acquisition Regulatory Council (FAR Council) held three Tribal consultation and outreach meetings to discuss rulemaking associated with section 811.

The meetings took place during October 2010 in Washington, DC; Albuquerque, New Mexico; and Fairbanks, Alaska (*see* the meeting notice that was published in the **Federal Register** on August 31, 2010 at 75 FR 53269). Transcripts of the meetings are available at *http://www.acq.osd.mil/dpap/dars/section811_docs.html.*

After the meetings, DoD, GSA, and NASA weighed the costs and benefits of publishing this rule as proposed or interim. The rule is being published as interim, rather than proposed, because the rule is implementing a statutory mandate, and the statutory date for issuance of regulations has already passed. Because this is an interim rule, the public will have another opportunity to comment. These additional comments could result in further changes in the final rule.

A frequently heard comment at the October meetings was a request that the FAR not use the 12 elements currently required at FAR 6.303–2 for J&As for less than full-and-open competition, but instead limit the elements to be addressed to the five elements listed in

section 811(b), which are set forth as follows:

(1) A description of the needs of the agency concerned for the matters covered by the contract;

(2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract;

(3) A determination that the use of a sole-source contract is in the best interest of the agency concerned;

(4) A determination that the anticipated cost of the contract will be fair and reasonable; and

(5) Such other matters as the head of the agency concerned shall specify.

DoD, GSA, and NASA have drafted the interim FAR rule to adopt only these five elements. DoD, GSA, and NASA did not adopt the suggestions raised in the October meetings (1) not to include the fair and reasonable price determination and (2) not to allow agency heads to address any matter, without specific limits (the fifth element set out in section 811). A determination that the anticipated cost of a contract will be fair and reasonable is a universal requirement in Federal contracting; including the requirement in the J&A would be sensible, even if it were not specifically required by section 811.

A common issue raised in the meetings was that the fifth element, "Such other matters as the head of the agency concerned shall specify," was too broad. DoD, GSA, and NASA determined that it made sense to allow agency heads to identify other factors supporting the decision to make a sole-source 8(a) award. By retaining the wording from the statute, agency heads retain the discretion to consider such factors as Indian economic development or meeting agency small business contracting goals—both factors that participants in the October meetings offered as legitimate reasons to make a sole-source award.

Commenters at the meetings and in the written comments also requested that the "over $20 million" threshold for requiring a J&A be applied only to the base year of a contract. For example, if a requirement was for $75 million, with a base year estimate of $15 million and four one-year $15 million options, commenters stated their belief that the requirement should not need a J&A because the base-year amount was not over $20 million. DoD, GSA, and NASA have declined to use the base year amount as the basis for determining the applicability of the J&A requirement. The FAR (1.108(c)) establishes the following rule:

• *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

Unless there is a specific reason, such as a statutory requirement to establish the dollar value of a procurement using a different method, agencies will not deviate from this FAR convention.

Commenters also requested that the requirement for the agency head to approve the J&A be delegated down to a much lower level, such as the contracting officer. FAR 1.108(b) states the following:

• *Delegation of authority.* Each authority is delegable unless specifically stated otherwise. * * *

J&As are delegable, but there are limits on the redelegation authority based on the dollar value of the procurement; these are stated at FAR 6.304. The competition advocate for the procuring activity and the head of the procuring activity are included in the approval authorities to ensure the J&A is prepared and coordinated properly within the agency. Unless there is a specific reason, agencies will not deviate from the FAR convention at FAR 6.304.

A commenter was concerned about whether "fair and reasonable price" equates to "fair market price." The FAR provides various provisions to address the commenter's concern. The various techniques that contracting officers may use to determine that a price is fair and reasonable are described at FAR 15.404–1, Proposal analysis techniques. With regard to 8(a) contracts, FAR 19.202–6(b) states that contracting officers shall follow the procedures at FAR 19.807, which reads in pertinent part as follows:

Estimating fair market price.

• The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.

• In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including certified cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

As required by the FAR, agencies will continue to use the existing regulations to evaluate prices offered for 8(a) contracts over $20 million.

The changes made by the interim rule are summarized as follows:

(1) Cross references to the requirement for a J&A when the procurement is a sole-source 8(a) over $20 million are added at FAR 6.204, entitled "Section 8(a) competition," FAR 6.302–5, entitled "Authorized or required by statute," and in 19.808–1, entitled "Sole source".

(2) FAR 6.302–5, which sets forth the situations in which other than full-and-open competition is authorized or required by statute, has been modified to clarify that, while 8(a) sole-source awards are still authorized, they now must be supported by a J&A prior to award when the total estimated contract amount is over $20 million.

(3) Circumstances requiring a J&A for other than full-and-open competition have been expanded to include a new FAR 6.303–1(b) that includes the section 811(a) prohibition against awarding a sole-source 8(a) contract over $20 million unless a written J&A is approved by the appropriate official and made public after award.

(4) FAR 6.303–2, Content, (of the J&A) has a new paragraph that lists the five required elements for the sole-source 8(a) J&A from section 811.

(5) FAR 19.808–1(a), Sole source, was revised to inform the contracting officer that the SBA may not accept for negotiation a sole-source 8(a) contract over $20 million unless the requesting agency has completed a J&A in accordance with the requirements at FAR 6.303.

Other requirements of section 811 were reviewed by DoD, GSA, and NASA and determined to be fully covered by the existing FAR. The specific areas reviewed included—

(1) *The definition of a "covered procurement" at section 811(c)(1).* Review determined that covered procurements, for the purposes of section 811, are those made under the SBA's Section 8(a) program. Therefore, it was not necessary to define and use the term "covered procurement" in this rule.

(2) *The definition of "head of an agency" at section 811(c)(2).* Review of the statutory references in this section determined that the FAR-wide definition of this term at FAR 2.101 could be used.

(3) *The definition of "appropriate official" at section 811(c)(3).* The statutory references provided in this section equate to those currently in FAR 6.304, Approval of the Justification.

(4) *Requirement for synopses of proposed procurement actions.* The existing FAR synopsis requirements at subpart 5.2, Synopses of Proposed

Contract Actions, were reviewed. No change is proposed to FAR 5.202, Exceptions, or FAR 5.205, Special situations, because the statute did not modify the existing 8(a) synopsis requirements.

(5) *Requirement at section 811(a)(3)to make the J&A and related information available to the public.* This statutory requirement matches the J&A publication requirements added by the National Defense Authorization Act for Fiscal Year 2008, section 844, entitled "Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts" (FAR Case 2008–003). The latter FAR case added the requirement to FAR 6.305, Availability of the Justification. Any J&A issued for an 8(a) sole-source contract award over $20 million will require posting in accordance with FAR 6.305, but no further change to that section is necessary.

Various commenters at the public meetings questioned whether contracting officers will be trained on the content of this rule implementing section 811. DoD, GSA, and NASA have prepared and submitted documentation to the Defense Acquisition University and the Federal Acquisition Institute to coordinate the appropriate changes in training curricula.

III. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant negative economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any requirements on the majority of small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. It is recognized that a very small number of businesses that have been awarded 8(a) contracts over the $20 million threshold may be impacted. However, the rule does not limit the number of contracts or dollars awarded to these businesses. The rule may also indirectly benefit the 9,165, currently certified section 8(a) firms by improving their likelihood of a contract award through increased competition, but this impact is similarly considered not significant.

Also, the FAR Council has limited flexibility in this case as the rule implements in the FAR statutory requirements mandated by section 811, Justification and Approval of Sole-Source Contracts, of the National Defense Authorization Act for Fiscal Year 2010.

DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610, (FAC 2005–50, FAR Case 2009–038) in correspondence.

V. Paperwork Reduction Act

The interim rule implements section 811, which prohibits the award of a sole-source contract in an amount over $20 million under the 8(a) program authority (15 U.S.C. 637(a)) without the contracting officer first obtaining a written J&A approved by an appropriate official and making public the J&A and related information. This additional paperwork requirement is internal to the Government and does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) was enacted on October 28, 2009. Section 811 required the FAR to be revised no later than 180 days after enactment, or April 26, 2010. Absent implementation of this interim rule, section 811 will not be implemented in the FAR and agencies will not be compliant with this provision. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 6, 15, and 19

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 6, 15, and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 6, 15, and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

■ 2. Amend section 6.204 by adding a sentence to the end of paragraph (b) to read as follows:

6.204 Section 8(a) competition.

* * * * *

(b) * * * (But *see* 6.302–5 and 6.303–1 for sole source 8(a) awards over $20 million.)

■ 3. Amend section 6.302–5 by revising paragraphs (b)(4) and (c)(2) to read as follows:

6.302–5 Authorized or required by statute.

* * * * *

(b) * * *

(4) Sole source awards under the 8(a) Program (15 U.S.C. 637), but *see* 6.303 for requirements for justification and approval of sole-source 8(a) awards over $20 million. (*See* subpart 19.8.)

* * * * *

(c) * * *

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for—

(i) Contracts awarded under (a)(2)(ii) or (b)(2) of this subsection;

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source); or

(iii) Contracts less than or equal to $20 million awarded under (b)(4) of this subsection.

* * * * *

■ 4. Amend section 6.303–1 by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively; and adding a new paragraph (b) to read as follows:

6.303–1 Requirements.

* * * * *

(b) The contracting officer shall not award a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding $20 million unless—

(1) The contracting officer justifies the use of a sole-source contract in writing in accordance with 6.303–2;

(2) The justification is approved by the appropriate official designated at 6.304; and

(3) The justification and related information are made public after award in accordance with 6.305.

* * * * *

■ 5. Amend section 6.303–2 by—

■ a. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

■ b. Adding a new paragraph (a);

■ c. Revising newly redesignated paragraph (b) introductory text; and

■ d. Adding a new paragraph (d).

The added and revised text reads as follows:

6.303–2 Content.

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited.

(b) As a minimum, each justification, except those for sole-source 8(a) contracts over $20 million (*see* paragraph (d) of this section), shall include the following information:

* * * * *

(d) As a minimum, each justification for a sole-source 8(a) contract over $20 million shall include the following information:

(1) A description of the needs of the agency concerned for the matters covered by the contract.

(2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (*see* 19.805–1).

(3) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

(4) A determination that the anticipated cost of the contract will be fair and reasonable.

(5) Such other matters as the head of the agency concerned shall specify for purposes of this section.

6.304 [Amended]

■ 6. Amend section 6.304 by removing from paragraph (a)(1) "6.303–2(a)(12)" and adding "6.303–2(b)(12)" in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.607 [Amended]

■ 7. Amend section 15.607 by removing from paragraph (b)(2) "6.303–2(b)" and adding "6.303–2(c)" in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 8. Amend section 19.808–1 by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and adding a new paragraph (a) to read as follows:

19.808–1 Sole source.

(a) The SBA may not accept for negotiation a sole-source 8(a) contract that exceeds $20 million unless the requesting agency has completed a justification in accordance with the requirements of 6.303.

* * * * *

[FR Doc. 2011–5554 Filed 3–15–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 10, 16, 44, and 52

[FAC 2005–50; FAR Case 2008–007; Item IV; Docket 2010–0086, Sequence 1]

RIN 9000–AL50

Federal Acquisition Regulation; Additional Requirements for Market Research

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 826, Market Research, of the National Defense Authorization Act for Fiscal Year 2008. Section 826 requires the head of an agency to take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of $5 million for the procurement of items other than commercial items engages in market research as necessary before making purchases.

DATES: *Effective Date:* April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2008–007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 34277 on June 16, 2010, to implement section 826, Market Research, of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 826 establishes additional requirements in subsection (c) of 10 U.S.C. 2377. As a matter of policy, these requirements are extended to all executive agencies. Specifically, the head of the agency must conduct market research before issuing an indefinite-delivery indefinite-quantity task or delivery order for a noncommercial item in excess of the simplified acquisition threshold. In addition, a prime contractor with a contract in excess of $5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold for or on behalf of the Government. Three respondents submitted 16 comments on the interim rule.

II. Discussion/Analysis

Public Comments: A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Purpose

1. *Comment:* One respondent stated that the guidance does not appear to explain the end purpose of the market research. Another respondent, however, concluded that the FAR states the purpose of the market research twice, in FAR 44.402(b) and 10.001(a)(3). The second respondent stated that the purpose for conducting market research is "clearly described in Part 10 and there is no reason to repeat that same language elsewhere in the FAR."

Response: The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council (the Councils) agree with the second respondent. FAR part 10 "prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services" (FAR 10.000). FAR 10.001(a)(3) lists the ways in which the

results of the market research may be used. We believe that the end purpose of market research is exhaustively covered in FAR part 10. We also agree that there is no need to repeat this material in FAR subpart 44.4, and the final rule removes the redundant material.

2. *Comment:* A respondent noted that competitively awarded indefinite-delivery indefinite-quantity contracts are priced as a result of market forces. Conducting market research prior to the award of individual task orders "will only be looking at the scope of Task Order* * * (and) is redundant to the market research already required by FAR for the (indefinite-delivery indefinite-quantity) contract." It is unlikely to result in more competition or better pricing, according to the respondent.

Response: The Councils note that the purpose of market research is to effectively identify, on an on-going basis, the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency. The Councils disagree with the respondent's contention that more competition or better pricing are unlikely to result. (*Also see* responses at II.F., Burden.)

B. Location in FAR

1. *Comment:* A respondent noted that, while FAR part 10 contains scant detail on market research, there are existing market research techniques and information embedded in chapter 2 of the DoD Commercial Item (CI) Handbook at *http://www.acq.osd.mil/dpap/Docs/cihandbook.pdf.* The respondent stated that the Handbook might be instructive for executive agencies to use as part of any training requirements.

Response: This comment is outside the scope of the FAR case. However, it has been forwarded to both the Defense Acquisition University and the Federal Acquisition Institute for their consideration. The current Commercial Item Handbook (version 1.0) was published November 2001 and is currently in revision.

2. *Comment:* A respondent stated its conclusion that the section 826 requirement for contractors with contracts exceeding $5 million to perform market research for "other than commercial items" is misplaced because the title of FAR subpart 44.4 is "Subcontracts for Commercial Items and Commercial Components." The respondent suggested that a better location for the statutory requirement would be at FAR 44.303.

Response: The Councils agree that the requirement was misplaced in FAR subpart 44.4 and have relocated the clause prescription to FAR part 10, Market Research (rather than FAR subpart 44.3, as suggested by the respondent). The statute and policy require contractors to conduct market research in certain circumstances (when the contract is over $5 million for the procurement of items other than commercial items); whether the subcontract is for commercial or other than commercial items is immaterial to the contractor's requirement to conduct market research. The statute encourages contractors and subcontractors to use commercial items. The FAR is amended to delete the subject of market research from subpart 44.4, and the "Scope of subpart" section, FAR 44.400, is being revised accordingly. The Councils believe that the coverage is better located in FAR part 10 rather than FAR subpart 44.3, as the respondent suggested, because the latter subpart is exclusive to Contractors' Purchasing Systems Reviews.

3. *Comment:* A respondent stated that FAR 52.244–6 is intended to limit the clauses that a FAR part 15 prime contractor is required to flow down to a subcontractor selling commercial items. The respondent stated its belief that the new Alternate I to the clause is unnecessary. The respondent also concluded that the existing FAR part 10 market research language should not be restated there. Last, the respondent questioned the need for the added language about "procuring commercial items," when the focus of section 826 is on procurement of "other than commercial items."

Response: The Councils agree that Alternate I to FAR 52.244–6 is unnecessary and not relevant to subcontracts for commercial items. By removing discussion of market research from FAR subpart 44.4, there will no longer be a redundant discussion of FAR part 10 material in FAR subpart 44.4. The Councils agree with the respondent that the focus of section 826 is on the procurement of other than commercial items. Relocating the requirement for contractors to conduct market research to FAR part 10 better aligns the FAR coverage with the statute. The Councils have retained the requirement, at section 826(a) (10 U.S.C. 2377(c)(4)), for a contractor with a contract over $5 million for the procurement of other than commercial items to conduct market research. However, the Councils have added the requirement as a new FAR clause, 52.210–1, Market Research, prescribed at FAR 10.003, Contract clause. Because the statute requires the conduct of market research by a contractor awarded task orders or delivery orders over $5 million for items other than commercial items, we have added a cross-reference to the requirement to FAR subpart 16.5.

C. Clarification of FAR Language

1. *Comment:* A respondent concluded that the interim rule confuses the prime contractor's role in procuring supplies and services to support its deliverable to the Government, *i.e.,* subcontracting, with the unique and completely distinct role of a prime contractor holding a contract to operate a Government facility and act in the place of the Government in procuring supplies and services solely to support the activities at the Government facility, *i.e.,* acting as an agent of the Government.

Response: The Councils eliminated the "purchasing agent" language by deleting the Alternate I to FAR 52.244–6. The Councils also created a new FAR clause 52.210–1, Market Research.

2. *Comment:* A respondent noted that there is a significant difference between the section 826 requirement to conduct market research "as may be necessary" and the FAR 44.402(b) requirement to conduct market research "to the maximum extent practicable." The respondent requested that the language from section 826 be used so that contractors will have the ability to tailor their market research as necessary to reflect their knowledge and experience of the supplies and services being procured.

Response: The Councils do not agree with the respondent. The Government has interpreted "as may be necessary" to mean "to the maximum extent practicable." In any case, the term "to the maximum extent practicable" has been removed from the case, as the coverage for FAR 44.402(b) has been deleted from the rule.

D. Application

1. *Comment:* According to the respondent, mixing the discussion of a contractor's possible roles of subcontracting and acting as the Government's agent has created a lower standard for "agents." As written, the respondent stated, the language requires contractors to perform the necessary market research whenever procuring other than commercial items, but purchasing agents are only required to perform market research when procuring other-than-commercial items with a value over the simplified acquisition threshold. The respondent questioned the need for this distinction.

Response: The Councils agree that there need not be any distinction

between the contractor acting as a subcontractor and the contractor "acting as a purchasing agent." The language has been removed from FAR subpart 44.4.

2. *Comment:* A respondent recommended requiring the conduct of market research prior to the award of each task order issued under an indefinite-delivery indefinite-quantity contract that was awarded on a sole-source basis.

Response: The Councils disagree with the respondent because the clear language of the statute, section 826(c), establishes a requirement for the conduct of market research appropriate to the circumstances prior to awarding a task order or delivery order in excess of the simplified acquisition threshold for the procurement of items other than commercial items. The statute does not limit the market research requirements to task orders or delivery orders awarded against sole-source indefinite-delivery contracts. Although this is mandatory for DoD and not for civilian agencies, the language was applied to civilian agencies for uniformity across the Government. *See also* the response to the second comment at II.A., Purpose, and the responses at II.E., Exceptions.

E. Exceptions

1. *Comment:* One respondent stated that the addition of a new paragraph (d) at FAR 10.001, Policy, only applies to "(A) contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and (B) disaster relief * * *". For that reason, the respondent believes that the same applicability should be added to FAR 44.402, as paragraph (d) outlines. The respondent noted that, without this change, there would be a negative impact on indefinite-delivery indefinite-quantity contracts.

Response: The respondent's assumptions about the applicability are not correct. The requirement for agencies to conduct market research for disaster relief and contingency operations already existed at FAR 10.001(a)(2).

2. *Comment:* A respondent claimed that indefinite-quantity contracts set aside for Small Business Administration (SBA) categories, such as the 8(a) program and small disadvantaged business, should be exempt from market research requirements because the intent is to facilitate the SBA in supporting these "specialty market segments." The respondent notes that this market segment historically is very committed and can be relied upon to self-police.

Response: The SBA's current socioeconomic programs offering eligible program participants contractual opportunities are the section 8(a) program, HUBZone program, and the service-disabled veteran-owned small business concern program. The SBA has finalized the regulations that will provide guidance for the women-owned small business Federal contract program. The rule was published in the **Federal Register** on October 7, 2010 (75 FR 66258). The SBA does not have a small and disadvantaged business (SDB) program offering SDB set-asides. However, the SBA's 8(a) firms may represent themselves as SDBs for Federal contracts and subcontracts to include task- and delivery-orders under indefinite-delivery contracts.

Performing market research for task- and delivery-orders will not diminish opportunities for agencies to establish set-asides for small-business concerns or, when appropriate, award sole-source contracts for indefinite-delivery contracts. Market research performed by prime contractors will also enhance subcontracting opportunities for small-business concerns. Careful attention to market-research strategies is an effective method for creating contract opportunities for small-business concerns. It provides them with an awareness of forthcoming procurements. In turn, the market research provides a vehicle for the small-business concern to market its capabilities to the Government and its contractors. FAR part 10 currently supports market research for small business concerns and requires agencies to take advantage of commercially available market research methods in order to effectively identify the capabilities of small businesses. The final rule will not limit an entity's ability to utilize the SBA's small business programs.

F. Burden

1. *Comment:* A respondent noted that at least one agency uses multiple-award contracts for construction. Each task order is competed, which the respondent stated ensures that "the full force of the marketplace is apparent in the pricing of competitiveness of each award." In addition, each prime contractor is continually reviewing the performance and prices of all its subcontractors. The respondent stated that having the Government perform additional market research in this market segment is a waste of time and money.

Response: The Councils do not agree with the respondent. Given the continuously changing circumstances and entry of new businesses, on-going market research is not a waste of manpower and taxpayers' money. Further, the respondent addresses the Government's performance of additional market research, but the statute also places the on-going market research requirement on the prime contractor in these circumstances. There is no reason why a multiple-award construction contract should be treated any differently than any multiple-award contract.

2. *Comment:* A respondent expressed concern about the negative impact caused by the time and effort required for each market survey. Fiscal year-end solicitations and awards may be slowed to the point of making awards impossible.

Response: The Councils cannot waive statutory requirements simply because compliance will take time. In an effort to enhance uniformity and consistency, the DoD statutory mandate was intentionally extended to all executive agencies, consistent with Governmentwide applications being sought in other competition matters by the Office of Federal Procurement Policy. The Councils also point the respondent to FAR 10.002(b)(1), which notes that the "extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience." Further, the Councils note that FAR 10.002(b)(1) clearly states that the market research effort for a new task order or delivery order need not be *de novo* in every case; the "contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant" (emphasis added).

3. *Comment:* The respondent stated that the requirement for market research will greatly impede the award of task orders, slowing fiscal year-end awards to the point of impossibility and negatively impacting Base Operating Support/Service (BOS) contracts. The respondent noted that BOS contracts have performance-based elements that ensure the contractor has incentives for efficiencies that will result in substantive savings in cost and schedule. Time has proven that having a single contractor responsible for the full scope of a contract effort enables tradeoffs by the contractor that result in better overall performance and savings, according to the respondent, than would intermittent market research.

Response: Whatever the respondent's experience with BOS contracts containing performance-based elements, the Councils note that the statute requires the conduct of market research

for both single-award and multiple-award indefinite-delivery contracts. The point of having contractors conduct market research, as stated in the law, is to identify commercial or nondevelopmental items that may be available to meet the agency's needs, not to identify efficiency trade-offs within the contractor's operations. Both efforts can proceed in tandem.

Finally, this final rule makes several conforming changes and technical corrections as a result of public comments received:

1. The language added to FAR 52.244–6 (Alternate I) is relocated to a new FAR clause 52.210–1, Market Research;

2. A prescription for the new clause is added at FAR 10.003, Contract clause; and

3. A cross-reference for the clause is added at FAR 16.506(h) when the contract is over $5 million for the procurement of items other than commercial items.

III. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because of the high dollar threshold, non-applicability to contracts for commercial items (including commercial items that are services), and non-applicability to subcontracts for commercial items (including commercial items that are services). DoD, GSA, and NASA anticipate that the required market research is likely to increase the number of small businesses identified as able to provide commercial or nondevelopmental items as subcontractors. Any impact to small businesses is positive because their commercial and nondevelopmental items are more likely to be discovered as a result of these market research requirements. No comments were received from small entities in response to the invitation to do so included in the interim rule.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 10, 16, 44, and 52

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 10, 16, 44, and 52, which was published in the **Federal Register** at 75 FR 34277, June 16, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 10, 16, 44, 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 10—MARKET RESEARCH

■ 1. Amend section 10.001 by revising paragraph (d) to read as follows:

10.001 Policy.

* * * * *

(d) *See* 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of $5 million for the procurement of items other than commercial items in accordance with section 826 of Public Law 110–181.

■ 2. Add section 10.003 to read as follows:

10.003 Contract clause.

The contracting officer shall insert the clause at 52.210–1, Market Research, in solicitations and contracts over $5 million for the procurement of items other than commercial items.

PART 16—TYPES OF CONTRACTS

■ 3. Amend section 16.506 by adding paragraph (h) to read as follows:

16.506 Solicitation provisions and contract clauses.

* * * * *

(h) *See* 10.001(d) for insertion of the clause at 52.210–1, Market Research, when the contract is over $5 million for the procurement of items other than commercial items.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 4. Revise section 44.400 to read as follows:

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with section 8002(b)(2) of Public Law 103–355.

44.402 [Amended]

■ 5. Amend section 44.402 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

■ 6. Revise section 44.403 to read as follows:

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add section 52.210–1 to read as follows:

52.210–1 Market Research.

As prescribed in 10.003, insert the following clause:

Market Research (APR 2011)

(a) *Definition.* As used in this clause—

Commercial item and *nondevelopmental item* have the meaning contained in Federal Acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to—

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(i) Meet the agency's requirements;

(ii) Could be modified to meet the agency's requirements; or

(iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.

(End of clause)

52.244–6 [Amended]

■ 8. Amend section 52.244–6 by removing from the introductory text "44.403(a)," and adding "44.403," in its place; and removing Alternate I.

[FR Doc. 2011–5555 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13 and 19

[FAC 2005–50; FAR Case 2011–004; Item V; Docket 2011–0004, Sequence 1]

RIN 9000–AL88

Federal Acquisition Regulation; Socioeconomic Program Parity

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 1347 of the "Small Business Jobs Act of 2010." Section 1347 clarifies the contracting officer's ability to use discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a), HUBZone, or service-disabled veteran-owned small business (SDVOSB) programs. There is no order of priority among small businesses in the 8(a) Business Development Program, the HUBZone Program, or the SDVOSB Program.

DATES: *Effective Date:* March 16, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–50, FAR Case 2011–004, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2011–004" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2011–004." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2011–004" on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–50, FAR Case 2011–004, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2011–004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR, to implement section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240). Section 1347 changed the word "shall" to "may" at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)). This interim rule makes similar changes to the FAR, ensuring that the FAR clearly reflects the statutory relationship among the small business programs and eliminates any confusion on the part of contracting officers or others.

DoD, GSA, and NASA published a proposed rule under FAR Case 2006–034 in the **Federal Register** at 73 FR 12699, March 10, 2008, which would have amended the FAR to clearly reflect the Small Business Administration's (SBA) interpretation of the Small Business Act and its agency regulations that no order of precedence applies when the contracting officer considers satisfying a requirement through an award to a HUBZone small business concern, a SDVOSB concern, or a small business participating in the 8(a) Program. The proposed rule was closed due to the Government Accountability Office's and the Court of Federal Claims' interpretation of the Small Business Act to require acquisitions to be set aside for HUBZone small businesses before setting aside acquisitions for other small business programs. *See Mission Critical Solutions* v. *U.S.,* 91 Fed. Cl. 386 (2010), and B–401057.

This rule does not address the women-owned small businesses and their relationship to the other small business programs. FAR Case 2010–015, Women-Owned Small Business Program, will be published as an interim rule with request for comments to implement the SBA's Women-owned Small Business (WOSB) Federal Contract Program final rule, (75 FR 62258, October 7, 2010), which became effective on February 4, 2011. SBA's rule provides parity for WOSBs with SBA's other small business contracting programs.

II. Discussion and Analysis

Section 1347 amended the language concerning HUBZone set asides by deleting the "shall" set aside in the statute and replacing that term with "may" set aside. This clarifies that contracting officers can exercise discretion when determining whether a requirement will be restricted to small business concerns under the 8(a), HUBZone or SDVOSB programs.

This interim rule is intended to address the recent statutory clarification and make clear that—

1. There is no order of precedence among the 8(a), HUBZone, or SDVOSB programs. However, if a requirement has been accepted by SBA under the 8(a) Program, it must remain in the 8(a) program unless SBA agrees to its release in accordance with 13 CFR 124, 125 and 126;

2. For acquisitions exceeding the simplified acquisition threshold, the contracting officer must consider a set-aside or sole source acquisition to a small business under the 8(a), HUBZone, or SDVOSB programs before the contracting officer proceeds with a small business set-aside. *See* FAR 19.203(c) and 19.502–2(b); and

3. The small business set-aside requirement of FAR 19.502–2(a) does not preclude award of a contract to a qualified 8(a) Program participant, HUBZone small business concern, or SDVOSB concern, because the SBA's regulations give the contracting officer discretionary authority to use the 8(a), HUBZone, or SDVOSB, at dollar levels above the micro-purchase threshold and at or below the simplified acquisition threshold.

III. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* because this rule revises the FAR to implement Section 1347 of the Small Business Jobs Act of 2010 governing specific contracting and business assistance programs which include the 8(a), HUBZone, and the SDVOSB programs.

The Regulatory Secretariat will be submitting a copy of the Interim

Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–50, FAR Case 2011–004) in correspondence.

The analysis is summarized as follows:

The purpose of this rule is to ensure that the FAR clearly reflects section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240) and to incorporate the SBA's interpretation of the Small Business Act and regulations promulgated thereunder. Following recent interpretations of the Small Business Act by the Government Accountability Office and the Court of Federal Claims, some in the acquisition community have been confused about whether there is an order of precedence that applies when deciding whether to satisfy a requirement through an award to a small business, a small business participating in the 8(a) Business Development Program, a HUBZone small business, or a SDVOSB. Section 1347 clarified that there is parity, rather than an order of precedence, and the purpose of this interim rule is to ensure that the FAR removes any uncertainty on the part of the contracting officer, small businesses, and others.

Small businesses that participate in Federal Government contracting are the entities that may be impacted by the rule. There should be no negative impact on small businesses as a whole. The number of contracts awarded overall to small businesses should not decrease as a result of this rule. However, it is possible that the clarity the rule provides could result in a difference in the number of contracts awarded to any particular category of small businesses.

Generally, all current and potential Government contractors must register in the Central Contractor Registration (CCR) database to be eligible for contract award and payment. There are approximately 349,992 small business firms; 9,303 HUBZone firms; 9,234 8(a) firms and 18,213 SDVOSB firms currently registered in CCR that may be affected by this final rule.

There are no significant alternatives that would reduce the impact on small businesses. This FAR rule is implementing section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240).

V. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the enactment of the Small Business Jobs Act of 2010 requires the implementation of section 1347. The statute was enacted on September 27, 2010. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 13 and 19

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 13 and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 13 and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 13—SIMPLIFIED ACQUISITIONS PROCEDURES

■ 2. Amend section 13.003 by removing from paragraph (b)(1) "*see* 19.000" and adding "*see* 19.000, 19.203," in its place; and by revising paragraph (b)(2) to read as follows:

13.003 Policy.

* * * * *

(b) * * *

(2) The contracting officer may make an award to a small business under the 8(a) Program (*see* subpart 19.8), or set aside for HUBZone small business concerns (*see* 19.1305) or service-disabled veteran-owned small business concerns (*see* 19.1405) an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and at or below the simplified acquisition threshold. The following contracting officer's decisions for acquisitions at or below the simplified acquisition threshold are not subject to review under subpart 19.4:

(i) A decision not to make an award under the 8(a) Program (*see* subpart 19.8).

(ii) A decision not to set aside an acquisition for HUBZone small business or service-disabled veteran-owned small business concerns participation.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.202 [Amended]

■ 3. Amend section 19.202 by removing "Subpart 19.5, 19.8, or 19.13" and adding "subpart 19.5, 19.8, 19.13, or 19.14" in its place.

■ 4. Add section 19.203 to read as follows:

19.203 Relationship among small business programs.

(a) There is no order of precedence among the 8(a) Program (subpart 19.8), HUBZone Program (subpart 19.13), or Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14).

(b) *At or below the simplified acquisition threshold.* The requirement to exclusively reserve acquisitions for small business concerns at 19.502–2(a) does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, or SDVOSB Program. If the contracting officer does not proceed with a small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase.

(c) *Above the simplified acquisition threshold.* The contracting officer shall first consider an acquisition for the 8(a), HUBZone, or SDVOSB programs before using a small business set-aside (*see* 19.502–2(b)). However, if a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless SBA agrees to its release in accordance with 13 CFR parts 124, 125 and 126.

(d) Small business set-asides have priority over acquisitions using full and open competition. *See* requirements for establishing a small business set-aside at subpart 19.5.

■ 5. Amend section 19.501 by removing paragraphs (c) and (d); redesignating paragraphs (e) through (i) as paragraphs (c) through (g), respectively; and revising the newly redesignated paragraph (c) to read as follows:

19.501 General.

* * * * *

(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency's small business programs. The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated to a small business under the 8(a), HUBZone, or service-disabled veteran-owned programs. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

* * * * *

■ 6. Amend section 19.502–2 by adding a new first sentence and revising the last sentence of paragraph (a); and by revising the first sentence in paragraph (b) to read as follows:

19.502–2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). * * * The small business reservation does not preclude the award of a contract as described in 19.203.

(b) Before setting aside an acquisition under this paragraph, refer to 19.203(c). * * *

* * * * *

■ 7. Amend section 19.800 by revising paragraph (e) to read as follows:

19.800 General.

* * * * *

(e) Before deciding to set aside an acquisition in accordance with subpart 19.5, the contracting officer may consider offering the acquisition to a small business under the 8(a) Program in accordance with 19.203.

* * * * *

19.804–2 [Amended]

■ 8. Amend section 19.804–2 by removing paragraph (a)(12); and redesignating paragraphs (a)(13) through (a)(16) as paragraphs (a)(12) through (a)(15), respectively.

■ 9. Amend section 19.1305 by—

■ a. Revising paragraph (a);

■ b. Removing paragraph (c);

■ c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and

■ d. Removing from the newly redesignated paragraph (c) "(*see* subpart 19.5)" and adding "(*see* 19.203)" in its place.

The revised text reads as follows:

19.1305 HUBZone set-aside procedures.

(a) The contracting officer—

(1) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied (*see* 19.203); and

(2) Shall consider HUBZone set-asides before considering HUBZone sole source awards (*see* 19.1306) or small business set-asides (*see* subpart 19.5).

* * * * *

■ 10. Amend section 19.1306 by revising the introductory text of paragraph (a) to read as follows:

19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (*see* 6.302–5(b)(5)) before considering small business set-asides (*see* 19.203 and subpart 19.5), provided none of the exclusions at 19.1304 apply; and—

* * * * *

■ 11. Amend section 19.1405 by revising paragraph (a); and removing from paragraph (c) "(*see* Subpart 19.5)" and adding "(*see* 19.203)" in its place.

The revised text reads as follows:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer—

(1) May set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied (*see* 19.203); and

(2) Shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (*see* 19.1406) or small business set-asides (*see* subpart 19.5).

* * * * *

■ 12. Amend section 19.1406 by revising the introductory text of paragraph (a) to read as follows:

19.1406 Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer may award contracts to service-disabled veteran-owned small business concerns on a sole source basis (*see* 6.302–5(b)(6)), before considering small business set-asides (*see* 19.203 and subpart 19.5) provided none of the exclusions of 19.1404 apply and—

* * * * *

[FR Doc. 2011–5556 Filed 3–15–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005–50; FAR Case 2008–034; Item VI; Docket 2009–0035, Sequence 1]

RIN 9000–AL44

Federal Acquisition Regulation; Use of Commercial Services Item Authority

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services, specifically services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. These services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services. The rule details the information the contracting officer may consider in order to make this determination.

DATES: *Effective Date:* March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2008–034.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 74 FR 52852 on October 14, 2009, to implement section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. The comment period closed on December 14, 2009.

Four respondents submitted comments on the interim rule.

II. Discussion/Analysis

The analysis of public comments by the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council (the Councils) follows:

A. Agree With the Rule

Comment: One respondent agreed with the interim rule. The respondent believes including "services of a type" provides the Government with flexibility to access a wide variety of services with beneficial contracting methods.

Response: The Councils acknowledge the respondent's agreement with the interim rule.

B. "Services of a Type"

Comment: One respondent suggests adding a definition for "services of a type" and/or providing examples of "services of a type."

Response: The Councils do not agree that definitions or examples are necessary to implement this case. The FAR definition of a "commercial item" adequately addresses what is and is not a commercial item. The contracting officer's determination that a service is considered a "service of a type" is a determination made based on the circumstances surrounding a particular acquisition and is made on a case-by-case basis.

C. Sold in the Commercial Marketplace

Comment: One respondent also suggests qualifying the two references to the "commercial marketplace" in FAR 15.403–1(c)(3)(ii)(A) as follows. The first reference would be followed by "by the offeror," while the second reference would be followed by "by others than the offeror."

Response: The respondent's suggested language changes go beyond the statute.

D. Establishing Price Reasonableness

1. *Determination that the offeror has submitted sufficient information* (*15.403–1(c)(3)(ii)(A)*).

Comment: One respondent suggests that requiring a contracting officer determination that the offeror has submitted sufficient information to evaluate the reasonableness of the offered price will increase the contracting officer's workload, may result in lengthy and unnecessary delays, and could reduce competition.

Response: The determination is required by statute.

2. *Other relevant information* (*15.403–1(c)(3)(ii)(C)*).

Comment: One respondent believes that if a service is "of a type" sold in the commercial market place, but price reasonableness cannot be established, then that service would not benefit from the Truth in Negotiations Act exception for commercial items, and that such an outcome would cause tremendous confusion among contracting officers and potential offerors of commercial items.

Response: If price reasonableness cannot be determined based on prices for similar commercial services, the services "of a type" cannot be determined to be commercial items (*see 15.403–1(c)(3)(ii)(A)*). In that case, the contracting officer would need to determine price reasonableness by requesting relevant cost or pricing data from the contractor.

Comment: One respondent suggests that the requirement to provide cost information other than cost or pricing data could prove difficult for industry vendors, which may diminish the field of vendors.

Response: Current FAR 15.402 policy requires that the contracting officer determine price reasonableness. This cost information can come in many forms (sales data, vendor quotations, historical data, *etc.*) and is usually on hand for a contractor. Consequently, providing this cost information will not present a burden sufficient to discourage industry vendors from seeking Government contracts.

Comment: One respondent believes that if the contracting officer can request cost data, this additional work could result in significant delays in contract award, contract delivery schedule problems and higher prices.

Response: The Councils acknowledge the respondent's concern; however, the contracting officer is required to request appropriate cost or pricing data sufficient to determine price reasonableness.

E. Location of Coverage

Comment: One respondent suggested that this FAR change should be in FAR 15.403–3 in lieu of 15.403–1.

Response: The Councils believe the language belongs in FAR 15.403–1, since it is more closely aligned with the prohibition on obtaining cost or pricing data than the FAR section requiring information other than cost or pricing data. It is noted that these two sections complement each other and are often used congruently.

III. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses. This rule impacts the Government by requiring a new written determination by the contracting officer. The rule details the information the contracting officer may consider in order to make this determination. In addition, since the current FAR 15.403–3(a)(1) provides for contracting officers to obtain the relevant information necessary to determine price reasonableness, this final rule places no additional requirements on contractors.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013, titled: Cost or Pricing Data Exemption.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 15, which was published in the **Federal Register** at 74 FR 52852 on October 14, 2009, is adopted as a final rule without change.

[FR Doc. 2011–5557 Filed 3–15–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–50; FAR Case 2009–040; Item VII; Docket 2010–0092, Sequence 1]

RIN 9000–AL57

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2009–040.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 38689 on July 2, 2010, to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. These thresholds were effective on January 1, 2010. No public comments were received. DoD, GSA, and NASA have agreed to convert this FAR case from an interim to a final rule without change.

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0130, titled: Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate; 9000–0025, titled: Buy American Act, Trade Agreements Act Certificate; and 9000–0141, titled: Buy American Act-Construction.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22, 25, and 52, which was published in the **Federal Register** at 75 FR 38689 on July 2, 2010, is adopted as a final rule without change.

[FR Doc. 2011–5558 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–50; FAR Case 2009–025; Item VIII; Docket 2010–0087, Sequence 1]

RIN 9000–AL58

Federal Acquisition Regulation; Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to align it with a Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns.

DATES: *Effective Date:* March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2009–025.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 34283 on June 16, 2010, to maintain consistency between CAS and FAR in matters relating to disclosure requirements of CAS for contracts awarded to foreign concerns. Specifically, the interim rule was issued in response to the Cost Accounting Standard Board's March 26, 2008, publication of a final rule, which implemented the use of the clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns (73 FR 15939). The interim rule amended the FAR to align FAR clause 52.230–4 with the Cost Accounting Standards Board clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns. FAR clause 52.230–6, Administration of Cost Accounting

Standards, was also revised to include reference to FAR clause 52.230–4.

DoD, GSA, and NASA received no comments on the interim rule and have adopted the interim rule as a final rule without change.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because contracts and subcontracts with small businesses are exempt from the application of the Cost Accounting Standards.

IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 30 and 52, which was published in the **Federal Register** at 75 FR 34283 on June 16, 2010, is adopted as a final rule without change.

[FR Doc. 2011–5559 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–50; FAR Case 2009–026; Item IX; Docket 2010–0088, Sequence 1]

RIN 9000–AL54

Federal Acquisition Regulation; Compensation for Personal Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR). The interim rule aligned the FAR with the revised Cost Accounting Standards (CAS) Board standards "Cost Accounting Standard for composition and measurement of pension cost," and "Accounting for the cost of deferred compensation."

DATES: *Effective Date:* March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2009–026.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 34285 on June 16, 2010, to maintain consistency between CAS and FAR in matters relating to the administration of CAS. The interim rule aligned the existing FAR 31.205–6(q)(2)(i) and (ii) with revisions to CAS 412 "Cost Accounting Standards for composition and measurement of pension cost," and CAS 415 "Accounting for the cost of deferred compensation."

The CAS Board had specified that the accounting of Employee Stock Ownership Plan (ESOP) costs, regardless of type, would be covered by the provisions of CAS 415 only and not by CAS 412. The CAS Board also provided criteria in CAS 415 for measuring ESOP costs and assigning these costs to cost accounting periods.

DoD, GSA, and NASA received no comments on the interim rule and have adopted the interim rule as a final rule without change.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because affected small businesses are currently required to comply with CAS 412 and CAS 415. While small businesses are otherwise not subject to CAS, they are subject to selected standards for the purpose of determining allowability of costs under Government contracts. Among these standards are CAS 412 and CAS 415 as set forth in FAR 31.205–6(q). For small businesses currently using CAS 415, there will be no increase in cost or effort. For small businesses that must change from CAS 412 to CAS 415, the possible change from measuring costs in accordance with CAS 412 to CAS 415 would result, at most, in a negligible increase in administrative burden because of the similarities between CAS 412 and CAS 415. The potential increase of administrative effort, albeit minor, will be offset by the uniformity and consistency in accounting for deferred compensation costs achieved by this rule that will benefit all entities by reducing their administrative burden.

IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 31, which was published in the **Federal Register** at 75 FR 34285 on June 16, 2010, is adopted as a final rule without change.

[FR Doc. 2011–5560 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 18, 19, and 52

[FAC 2005–50; Item X; Docket 2011–0078; Sequence 1]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulations in order to make editorial changes.

DATES: *Effective Date:* March 16, 2011.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street, NE., 7th Floor, Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–50, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 18, 19, and 52, this document makes editorial changes to Federal Acquisition Regulations.

List of Subjects in 48 CFR Parts 18, 19, and 52

Government procurement.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 18, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 18, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 18—EMERGENCY ACQUISITIONS

18.204 [Amended]

■ 2. Amend section 18.204 in paragraph (b) by removing "*http://www.whitehouse.gov/omb/procurement/guides/emergency_acquisitions_guide.pdf*" and adding "*http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf*" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.201 [Amended]

■ 3. Amend section 19.201 in paragraph (b) by removing from the last sentence "*http://www.arnet.gov/References/sdbadjustments.htm*" and adding "*https://www.acquisition.gov/References/sdbadjustments.htm*" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (c)(8)(ii) "(c)(9)(i)" and adding "(c)(8)(i)" in its place;

■ c. Removing from paragraph (c)(9)(ii) "(c)(10)(i)" and adding "(c)(9)(i)" in its place;

■ d. In Alternate I, revising the alternate date, introductory text, and first paragraph; and

■ e. In Alternate II, removing from the introductory text "(c)(9)(iii)" and adding "(c)(8)(iii)" in its place.

The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Mar 2011)

* * * * *

Alternate I * * *

As prescribed in 12.301(b)(2), add the following paragraph (c)(10) to the basic provision:

(10) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(8) of this provision.)

* * * * *

■ 5. Amend section 52.212–5 by revising the date of the clause; removing from paragraph (b)(17) "Apr 2008)" and adding "(Dec 2010)" in its place; redesignating paragraphs (b)(27) through (b)(45) as (b)(28) through (b)(46), respectively; and adding a new paragraph (b)(27).

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (MAR 2011)

(b) * * *

(27) 52.222–37, Employment Reports on Veterans (Sep 2010) (38 U.S.C. 4212).

* * * * *

[FR Doc. 2011–5561 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0077, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–50; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–50, which amend the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–50, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates *see* separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–50 and the specific FAR case number. For

information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–50

Item	Subject	FAR case	Analyst
I	Proper Use and Management of Cost-Reimbursement Contracts (Interim)	2008–030	Sakalos.
II	Requirements for Acquisitions Pursuant to Multiple-Award Contracts (Interim)	2007–012	Clark.
III	Justification and Approval of Sole-Source 8(a) Contracts (Interim)	2009–038	Robinson.
IV	Additional Requirements for Market Research	2008–007	Sakalos.
*V	Socioeconomic Program Parity (Interim)	2011–004	Morgan.
VI	Use of Commercial Services Item Authority	2008–034	Chambers.
VII	Trade Agreements Thresholds	2009–040	Davis.
VIII	Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.	2009–025	Chambers.
IX	Compensation for Personal Services	2009–026	Chambers
X	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–50 amends the FAR as specified below:

Item I—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008–030) (Interim)

This interim rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). This law aligns with the goal of the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which is to reduce waste, fraud, and abuse in Government contracting. This rule provides internal regulatory guidance on the proper use and management of all contracts, specifically cost-reimbursement contracts. The rule identifies (1) circumstances when cost-reimbursement contracts are appropriate; (2) acquisition plan findings required to support the contract type selection; and (3) the acquisition resources necessary to award and manage a cost-reimbursement contract.

Item II—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007–012) (Interim)

This interim rule amends the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 863 mandates enhanced competition for orders placed under multiple-award contracts, including GSA's Federal Supply Schedules. If an order over the simplified acquisition threshold does not follow the section 863 competitive procedures, section 863 requires that a notice and the determination of an exception be published in FedBizOpps within 14 days after award.

The interim rule relocates all procedures for establishing a Blanket Purchase Agreement (BPA) or placing an order under a BPA in one subsection, FAR 8.405–3. New BPAs must be established in accordance with the new competition standard. Orders over the simplified acquisition threshold against a new multiple-award BPA must meet the new competition standards; use is discretionary for existing multiple-award BPAs.

For orders under FAR part 16 task- and delivery-order contracts, orders over the simplified acquisition threshold must meet the new competition procedures; each contract holder must receive notice of the intent to make a purchase.

Item III—Justification and Approval of Sole-Source 8(a) Contracts (2009–038) (Interim)

This interim rule amends the FAR to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over $20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making public the J&A and related information. This is a new internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over $20 million. It neither prohibits such awards nor increases the qualifications required of 8(a) firms. No automated systems are impacted.

Item IV—Additional Requirements for Market Research (FAR Case 2008–007)

This final rule adopts, with changes, the interim rule that amended the FAR to implement section 826 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 826, entitled "Market Research," established new requirements for agencies subject to Title 10, United States Code. As a matter of policy, this provision of law was applied to contracts awarded by all executive agencies. The rule requires that market research must be conducted before an agency places a task or delivery order in excess of the simplified acquisition threshold under an indefinite-delivery indefinite-quantity contract. In addition, a prime contractor with a contract in excess of $5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold. Among other changes, the final rule also deletes the language added to FAR 52.244–6 (Alternate I) and relocates it to a new FAR clause 52.210–1, Market Research.

Item V—Socioeconomic Program Parity (FAR Case 2011–004) (Interim)

This interim rule amends the FAR to implement section 1347 of the "Small Business Jobs Act of 2010" (Pub. L. 111–240) and the Small Business Administration regulations governing specific contracting and business assistance programs. Section 1347 changed the word "shall" to "may" at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)), thereby permitting a contracting officer to use discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a) Business Development Program, the Historically Underutilized Business Zone Program, or the Service-Disabled Veteran-Owned Small Business Program.

Item VI—Use of Commercial Services Item Authority (FAR Case 2008–034)

This final rule adopts, without change, an interim rule that implemented section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

Item VII—Trade Agreements Thresholds (FAR Case 2009–040)

This final rule adopts, without change, an interim rule that amended the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009–025)

This final rule adopts, without change, the interim rule that amended the FAR to revise FAR 30.201–4(c), 30.201–4(d)(1), 52.230–4, and 52.230–6 to maintain consistency between FAR and Cost Accounting Standards (CAS) regarding the administration of the Cost Accounting Standard Board's (CASB) rules, regulations and standards. This revision was necessitated by the CASB publishing a final rule in the **Federal Register** on March 26, 2008 (73 FR 15939) which implemented the revised clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

Item IX—Compensation for Personal Services (FAR Case 2009–026)

This final rule adopts, without change, the interim rule that amended the FAR to align the existing FAR 31.205–6(q)(2)(i) through (vi) with the changes made in Cost Accounting Standards (CAS) Board standards 412 "Cost Accounting Standard for composition and measurement of pension cost," and 415 "Accounting for the cost of deferred compensation." Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

Item X—Technical Amendments

Editorial changes are made at FAR 19.201, 52.212–3, and 52.212–5.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–5562 Filed 3–15–11; 8:45 am]

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