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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 212

[USCBP–2011–0007; CBP Dec. 11–07]

RIN 1651–AA81

Clarification of Countries and Geographic Areas Eligible for Participation in the Guam-Commonwealth of the Northern Mariana Islands Visa Waiver Program

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This interim final rule amends Department of Homeland Security regulations to clarify that individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to the Hong Kong Special Administrative Region (Hong Kong) are eligible for participation in the Guam-Commonwealth of the Northern Mariana Islands (CNMI) Visa Waiver Program. The Guam-CNMI Visa Waiver Program allows certain nonimmigrant aliens to enter Guam and/or the CNMI as nonimmigrant visitors for business or pleasure without a visa for a period of authorized stay not to exceed forty-five days. This interim final rule provides that beginning May 23, 2011, individuals holding BN(O) passports as a result of their connection to Hong Kong and traveling to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program on such BN(O) passport must present it and a Hong Kong identification card.

DATES: *Effective Date:* The effective date of the rule is May 23, 2011.

Comment Date: Comments must be received by May 23, 2011.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2011–0007.
- *Mail:* Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW., Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Cheryl C. Peters, U.S. Customs and Border Protection, Office of Field Operations, (202) 344–1438.

SUPPLEMENTARY INFORMATION:

I. Public Comments

Interested persons are invited to submit written comments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental or federalism effects of this rule. We urge commenters to reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. Background

A. Guam-CNMI Visa Waiver Program

Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110–229, 122 Stat. 754, 854, subject to a transition period, extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the CNMI. *See* sections 212 and 214 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1182 and 1184). On January 16, 2009, the Department of Homeland Security (DHS), through CBP, issued an interim final rule in the **Federal Register** replacing the then-existing Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. *See* 74 FR 2824.

The January 2009 rule provided that, beginning June 1, 2009, DHS would begin the administration and enforcement of the Guam-CNMI Visa Waiver Program. This program allows nonimmigrant visitors to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed forty-five days. On March 31, 2009, the Secretary of Homeland Security, after the necessary consultations, announced the delayed start of the transition period until November 28, 2009. On May 28, 2009, a technical amendment to the January 2009 rule was published, extending the implementation date of the Guam-CNMI Visa Waiver Program from June 1, 2009 to November 28, 2009. *See* 74 FR 25387.

The January 2009 rule lists the countries and geographic areas from which otherwise eligible individuals may travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. Among those countries and geographic areas listed are Hong Kong and the United Kingdom. The January 2009 rule allows individuals possessing a Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card as a result of their connection to Hong Kong to travel under the Guam-CNMI Visa Waiver Program. The January 2009 rule does not address the eligibility of individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to Hong Kong for travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program, and questions have arisen about their eligibility for travel under that program.

B. British Nationals (Overseas)

On July 1, 1997, sovereignty over Hong Kong reverted from the United Kingdom to the People's Republic of China, establishing Hong Kong as a Special Administrative Region of the People's Republic of China. In the years prior to the reversion, the United Kingdom created a new category of British nationality, British National (Overseas) (BN(O)). A person who was considered a British national by his or her connection with Hong Kong, as defined in the Hong Kong (British Nationality) Order 1986, was entitled to apply for BN(O) status, and to hold a passport in that status, by registration. BN(O) status is for life, but is not transferable, and registration ended in 1997. BN(O) passports, while British travel documents, do not confer the same rights as regular United Kingdom passports. BN(O) passports are issued to permanent residents of Hong Kong and do not confer the right of abode in the United Kingdom.

C. The Amendment

Under the Guam Visa Waiver Program, the predecessor to the current Guam-CNMI Visa Waiver Program, BN(O) passport holders were eligible to participate in the program as citizens of "the United Kingdom (including the citizens of the colony of Hong Kong)." 8 CFR 212.1(e)(3)(i). As a result of the reversion of sovereignty, Hong Kong and the United Kingdom are listed separately for the Guam-CNMI Visa Waiver Program. 8 CFR 212.1(q)(2)(ii).

In light of the questions that have arisen regarding whether BN(O) passport holders qualify under the Guam-CNMI Visa Waiver Program in the absence of a specific reference in the regulation to BN(O) passport holders, CBP believes it is appropriate to amend the regulations to clarify this issue. The amended regulation explicitly allows Hong Kong individuals holding BN(O) passports as a result of their connection to Hong Kong to travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. This clarification is based on the political changes in Hong Kong, the idiosyncrasies of the law of the United Kingdom discussed above, and the status of BN(O) passport holders as permanent residents of Hong Kong. Like Hong Kong SAR passport holders, BN(O) passport holders must present a Hong Kong identification card to travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program.

In order to provide BN(O) passport holders sufficient time to become aware of and adjust to the Hong Kong identification card requirement for participation in the Guam-CNMI Visa Waiver Program, the effective date of the amended regulation is May 23, 2011.

In addition, to provide further clarity in the regulation, DHS is relocating the existing regulatory requirements applicable to travelers from Taiwan under the Guam-CNMI Visa Waiver Program, from a parenthetical regarding Taiwan within the country list at 8 CFR 212.1(q)(2)(ii) in place since the January 2009 rule, to a new paragraph, 8 CFR 212.1(q)(2)(ii)(B). This new paragraph contains substantively identical text to the parenthetical in the January 2009 rule. The regulation continues to require that in order to participate in the program as a result of a connection to Taiwan, an individual must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Section 702(b) of the CNRA directs that all regulations necessary to implement the Guam-CNMI Visa Waiver Program shall be considered a foreign affairs function for purposes of section 553(a) of the Administrative Procedure Act (APA). *See* section 212 of the INA, as amended (8 U.S.C. 1182(l)(3)). As was the case with the January 2009 rule that replaced the Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program, this interim final rule is exempt from the notice and comment and 30-day delayed effective date requirements of the APA. *See* 74 FR 2824. DHS is nevertheless providing the opportunity for public comments. Further, a 60-day delayed effective date is provided in order to allow BN(O) passport holders sufficient time to become aware of and adjust to the Hong Kong identification card requirement for participation in the Guam-CNMI Visa Waiver Program.

B. Executive Order 12866

Section 3(d)(2) of Executive Order 12866 provides that the Executive Order does not apply to a regulation that involves a foreign affairs function of the United States, and thus it does not apply to this rule. Accordingly, the Office of Management and Budget has not reviewed this regulation under that Executive Order.

C. Regulatory Flexibility Act

Because this rule is being issued as an interim final rule on the foreign affairs function of the United States, as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Amendments to Regulations

Part 212 of title 8 of the Code of Federal Regulations is amended as set forth below:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

Section 212.1(q) also issued under section 702, Public Law 110–229, 122 Stat. 754, 854.

■ 2. Section 212.1(q)(2)(ii) is revised to read as follows:

§ 212.1 Documentary Requirements for Nonimmigrants.

* * * * *

(q) * * *

(2) * * *

(ii) *Eligible Countries and Geographic Areas.* Nationals of the following countries are eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI: Australia, Brunei, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, and the United Kingdom. Travelers with a connection to one of the following geographic areas—the Hong Kong Special Administrative Region (Hong Kong) or Taiwan—may also be eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI, *see* paragraphs (q)(2)(ii)(A) and (q)(2)(ii)(B) respectively.

(A) *Hong Kong Special Administrative Region (Hong Kong).* To be eligible to participate in the program as a result of a connection to Hong Kong, the following documentation is required: A Hong Kong Special Administrative Region (SAR) passport with a Hong Kong identification card; or a British

National (Overseas) (BN(O)) passport with a Hong Kong identification card.

(B) *Taiwan.* To be eligible to participate in the program as a result of a connection to Taiwan, one must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

* * * * *

Dated: March 16, 2011.

Janet Napolitano,

Secretary.

[FR Doc. 2011–6555 Filed 3–22–11; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2011–02]

Interpretive Rule Regarding Electronic Contributor Redesignations

AGENCY: Federal Election Commission.

ACTION: Notice of interpretive rule.

SUMMARY: Commission regulations require that a contributor's redesignation of a contribution for another election be in writing and signed by the contributor. The Commission construes the requirements of 11 CFR 110.1(b)(5) and 110.2(b)(5) to encompass a certain method of electronic redesignation. The method of electronic redesignation is described in the supplementary information below.

DATES: This Interpretive Rule is effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Allison T. Steinle, Attorney, Office of General Counsel, 999 E Street, NW., Washington, DC 20463 (202) 694–1000 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Commission regulations require that a contributor's redesignation of a contribution for another election be in writing and be signed by the contributor. 11 CFR 110.1(b)(5) and 110.2(b)(5). The Commission, however, recognizes that it should interpret the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act") and its regulations "consistent with contemporary technological innovations * * * where such technology would not compromise the intent of the Act and regulations." Advisory Opinion 1999–09 (Bradley for President); *see also* Advisory Opinions 2007–30 (Dodd); 2007–17 (DSCC); 1999–36 (Campaign Advantage); 1999–03 (Microsoft PAC); 1995–09 (NewtWatch).

During the course of an audit, the Commission recently determined that a specific redesignation practice provided the same degree of assurance of the contributor's identity and the contributor's intent to redesignate the contribution as a handwritten signature. Accordingly, the Commission determined that the practice met the requirements of 11 CFR 110.1(b)(5). The Commission believes it is important to inform the public, including political committees and their treasurers, of this determination.

The specific method approved by the Commission worked in the following manner: The political committee informed contributors through postal mail, with a follow-up e-mail, that, by visiting a Web site printed in the letter or by clicking on a link in the e-mail message that directed contributors to the Web site, they could redesignate their contributions to the candidate's other authorized committee if they wished to do so. Contributors were also informed that if they did not redesignate their contributions, they would then receive refunds automatically. Contributors who visited the Web site were asked to fill out an electronic form affirmatively authorizing the redesignation and verifying their identity by entering their personal information, including first and last name, address, phone number, e-mail address, occupation, and name of employer. Upon completing the form, contributors received a "receipt record," thanking them for their redesignation. The political committee also retained a record of each electronic redesignation in a database, including the personal information provided by each contributor making a redesignation, in a manner consistent with the recordkeeping requirements for signed written redesignations under 11 CFR 110.1(l). The Commission concluded that this process provided assurance of contributor identity and intent equivalent to a written signature.

Accordingly, the Commission construes the written signature requirements of 11 CFR 110.1(b)(5) and 110.2(b)(5) to encompass the method of electronic redesignation described above. Because the specific method approved by the Commission requires the contributor to provide personal information that can be verified against a committee's records, it provides a level of assurance as to the contributor's identity and intent comparable to that of a written signature. *See* Explanation and Justification for Final Rules on Contribution Limitations and Prohibitions, 67 FR 69928, 69934 (Nov. 19, 2002) (Commission declined to eliminate the written signature requirement for contributor redesignations).

The Commission encourages the use of innovations in technology to effectuate electronic redesignations. In that light, committees are advised that the Commission will consider other methods of electronic redesignation not explicitly addressed in this interpretive rule, provided that they offer a sufficient degree of assurance of the contributor's identity and the contributor's intent to redesignate. Unless and until the Commission initiates a rulemaking on this issue, such consideration may be provided on a case-by-case basis, including but not limited to the Commission's advisory opinion process or requests for Commission consideration of legal questions. *See* 2 U.S.C. 437f; 11 CFR part 112; Policy Statement Establishing a Pilot Program for Requesting Consideration of Legal Questions by the Commission, 75 FR 42088 (July 20, 2010). Committees are also advised that this interpretive rule does not alter or affect the timing or recordkeeping requirements of 11 CFR 110.1 or 110.2.

This **Federal Register** notice represents an interpretive rule announcing the general course of action that the Commission intends to follow. This interpretive rule does not constitute an agency rule requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act ("APA"). As such, it does not bind the Commission or any members of the general public, or create or remove any rights, duties, etc. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable. *See* 5 U.S.C. 603(a).

Dated: March 16, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–6756 Filed 3–22–11; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

RIN 3133–AD81

Prompt Corrective Action; Amended Definition of Low-Risk Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: In 2010, NCUA issued an Interim Final Rule expanding the definition of "low-risk assets" to include debt instruments on which the payment of principal and interest is unconditionally guaranteed by NCUA. Assets in this category receive a risk-weighting of zero for regulatory capital purposes to reflect the absence of credit risk. Having considered the public comments addressing the Interim Final Rule, NCUA is issuing this Final Rule permanently adopting the expanded definition of "low risk assets" without alteration.

DATES: This rule is effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, at the above address, or *telephone:* (703) 518–6557.

SUPPLEMENTARY INFORMATION:

Background

1. *Prompt Corrective Action.* In 1998, the Credit Union Membership Access Act, Public Law 105–219, 112 Stat. 913, mandated a system of regulatory capital standards for "natural person" credit unions entitled "Prompt Corrective Action" ("PCA"), 12 U.S.C. 1790d *et seq.* The NCUA Board adopted a comprehensive system of PCA, primarily in Part 702,[1] that imposes minimum capital standards and corresponding remedies to improve a credit union's net worth. 12 CFR 702 *et seq.*

Under PCA, a "natural person" credit union's "net worth ratio" determines its classification among five statutory net worth categories. 12 U.S.C. 1790d(c); 12 CFR 702.102. As a credit union's "net worth ratio" declines, so does its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions. 12 U.S.C. 1790d(e), (f) and (g); 12 CFR 702.204(a)–(b). For a credit union that is subject to an additional Risk-Based Net Worth Requirement, *id.* § 702.103, its minimum required "net worth ratio" depends upon a risk-weighting applied to each of eight different portfolios of credit union assets.[2] *Id.* § 702.104.

2. *NCUA Guaranteed Notes.* Chief among the problems experienced by corporate credit unions ("CCUs") during the Nation's recent economic downturn is the substantial devaluation of the mortgage-backed and asset-backed securities ("the distressed assets") held in their investment portfolios. In five such cases, the realization of losses on these distressed assets has driven the CCU into insolvency, requiring NCUA to place the CCU into liquidation.

To monetize the distressed assets held by the liquidated CCUs, NCUA embarked on a program in 2010 to securitize and sell those assets in a series of public offerings of senior debt instruments denominated "NCUA Guaranteed Notes" ("NGNs"). Under the NGN program, the Asset Management Estate of each liquidated CCU sells its distressed assets to a trust established by NCUA, which then resecuritizes the distressed assets in the form of NGNs. The trust then passes through to the NGN-holders the monthly cash flows produced by the underlying distressed assets. The NGNs benefit from the credit enhancement provided by the overcollateralization and excess interest generated by the underlying distressed assets.

To reinforce investor confidence in the NGNs, NCUA, as an agency of the Executive Branch of the United States, fully and unconditionally guarantees to investors the timely payment of principal and interest ("the NCUA Guaranty"). The NCUA Guaranty is backed by the full faith and credit of the United States. As a result of the NCUA Guaranty, the NGNs are legally permissible investments for federal "natural person" and CCUs, 12 U.S.C. 1757(7)(B); 12 CFR 704.5(c)(1) (2011), and for state-chartered "natural person" credit unions to the extent permitted by state law at the time of purchase.

3. *Risk-Weighting of "Low-Risk Assets".* Under PCA as it existed prior to this rulemaking, the NGNs held by a natural person credit union would fall within the "investments" risk portfolio. *Id.* § 702.104(c). The minimum risk-weighting applied to assets in that portfolio, based on their weighted average life, is 3 percent. *Id.* § 702.106(c)(1). The "investments" portfolio does not apply a risk-weighting of zero even when an investment carries no credit risk. The "Low-risk assets" risk portfolio, in contrast, does apply a risk-weighting of zero, but the NGNs did not fall within its scope. *Id.* § 702.106(d). Its scope was limited to "Cash on hand * * * and the NCUSIF deposit." *Id.* § 702.104(d).

Recognizing that an obligation supported by the full faith and credit of the United States carries no credit risk, the four other federal financial institution regulators jointly permit their respective institutions to apply a zero percent risk-weighting to the NGNs those institutions purchase because of the unconditional NCUA Guaranty.[3] The purpose of this rulemaking is to accord the same zero percent risk-weighting to NGNs purchased by "natural person" credit unions. Otherwise, potential credit union investors in the NGNs would face a disincentive to invest: A minimum 3 percent risk-weighting—and the adverse effect on PCA net worth—even though the NGNs are free of credit risk.

4. *Comments on Interim Final Rule.* To accord the NGNs a risk-weighting of zero for regulatory capital purposes, the NCUA Board issued an "Interim final rule with request for comments," expanding the definition "low risk assets" to include "debt instruments unconditionally guaranteed by the National Credit Union Administration," and thus backed by the full faith and credit of the United States.[4] 75 FR 66298 (October 28, 2010). NCUA

[1] Part 702 has been amended five times since it was originally adopted in 2000: First, to incorporate limited technical corrections. 65 FR 55439 (Sept. 14, 2000). Second, to delete sections made obsolete by adoption of a uniform quarterly schedule for filing Call Reports. 67 FR 12459 (March 19, 2002). Third, to incorporate a series of revisions and adjustments to improve and simplify PCA implementation. 67 FR 71078 (Nov. 29, 2002). A proposal to modify the criteria for filing a net worth restoration plan, 67 FR 7113 (Nov. 29, 2002), was never adopted. Fourth, to add a third risk-weighting tier to the standard risk-based net worth component for member business loans. 68 FR 56537, 56546 (Oct. 1, 2003). Fifth, to implement a statutory amendment allowing the acquirer in a credit union merger to combine the merging credit union's retained earnings with its own to determine the acquirer's post-merger "net worth." 73 FR 72688 (Dec. 1, 2008). A proposed rule to expand the definition of "net worth" to include assistance provided under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, was issued by the NCUA Board on March 17, 2011.

[2] "Long-term real estate loans," "Member Business Loans ("MBL") outstanding," "Investments," "Low-risk assets," "Average-risk assets," "Loans sold with recourse," "Unused MBL commitments" and "Allowance." 12 CFR 702.104.

[3] *See* joint letter dated October 13, 2010, from the Federal Reserve Board, Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision to Director, Division of Supervision, NCUA Office of Examination and Insurance.

[4] To maximize the opportunity for credit union participation in the NGN offerings, the NCUA Board issued the Interim Final Rule and made it effective immediately under the good cause exception to the Administrative Procedure Act's requirement of a public comment period preceding the adoption of a final rule, and of a waiting period of at least 30 days between publication of a final rule and its effective date. 75 FR at 66299.

received two comment letters in response to the Interim Final Rule, both from national credit union industry trade associations.

Both commenters supported the Interim Final Rule without reservation, addressing collateral matters as well. One commenter advocated a separate rulemaking to consider further broadening the definition of "low risk assets" to add other "similar low-risk assets such as credit union investments in Federal Home Loan Bank securities." This final rule leaves open to the NCUA Board the option of adding debt instruments guaranteed by other Government entities to the "low risk assets" portfolio once NCUA has had an opportunity to assess its experience with the NGN offerings in retrospect (including whether the NCUA Guaranty was tapped), and to consider other risks associated with those instruments.

In regard to the NGN offerings, the other commenter encouraged maximum transparency and disclosure of information about the NGNs in order to help those credit unions that lack the expertise and resources to independently asses the NGNs and to make informed business decisions about whether to invest. To ensure comprehensive transparency and disclosure of information about each NGN offering, the offerings are being conducted for NCUA by a Wall Street investment banking firm that specializes in the issuance of structured debt products by governmental entities. Further, as reflected primarily in the Offering Memorandum for each NGN offering, NCUA is relying on the advice of two law firms that have substantial expertise in the legal disclosure requirements that apply to these transactions.

In view of the commenters' support of the Interim Final Rule, there is no reason to revise the amendatory language. Accordingly, the NCUA Board adopts in final the language of the Interim Final Rule without alteration.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This rule will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. Control number 3133–0129 has been issued for Part 702 and will be displayed at the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the Executive Order. This rule 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. Accordingly, this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA does not believe this rule is a "major rule" within the meaning of the relevant sections of SBREFA. The Office of Management and Budget has determined that the Interim Final Rule is not a "major rule" for purposes of SBREFA. As required by SBREFA, NCUA will file appropriate reports with Congress and the General Accountability Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 17, 2011.

Mary F. Rupp,

Secretary of the Board.

Accordingly, the Interim Final Rule amending 12 CFR part 702, which was published at 75 FR 66298 on October 28, 2010, is adopted as a Final Rule without change.

[FR Doc. 2011–6754 Filed 3–22–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AD58

Corporate Credit Unions, Technical Corrections

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: In 2010, NCUA issued technical corrections to its corporate credit union rule, published in the **Federal Register** of October 20, 2010. NCUA is issuing this final rule adopting the technical corrections without alteration.

DATES: This rule is effective March 23, 2011.

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

SUPPLEMENTARY INFORMATION:

I. Background

In October 2010, NCUA published a comprehensive overhaul to its corporate credit union rule, 12 CFR part 704. 75 FR 64786 (Oct. 20, 2010). After publication, NCUA discovered that three technical corrections were necessary, and NCUA issued an interim final rule containing the corrections in December. 75 FR 47173 (Dec. 20, 2010). The technical corrections are as follows:

Section 704.2 Definition of "collateralized debt obligation"

The final revisions to part 704 prohibited corporate credit unions (corporates) from purchasing certain overly complex or leveraged investments, including collateralized debt obligations (CDOs). 75 FR 64786, 64793 (October 20, 2010). These prohibitions were intended to protect the corporates from the potential for excessive investment losses. 74 FR 65210, 65237 (December 9, 2009)

(preamble to proposed part 704 revisions). The definition of CDO, however, was overly broad, in that it inadvertently included particular investments that did not—when subject to the other credit risk and asset liability management limitations of part 704—present the risk of excessive losses. This final rule amends the CDO definition to ensure the following are not prohibited: Commercial mortgage backed securities; securities collateralized by Agency mortgage-backed securities (Agency MBS); and securities that are fully guaranteed as to principal and interest by the United States Government and its agencies and government sponsored enterprises.

Paragraph 704.6(b) Exemptions to § 704.6

Section 704.6 generally requires corporate investments meet certain single obligor concentration limits, sector concentration limits, and credit rating requirements. Paragraph 704.6(b) exempts certain investments, including investments generally issued by or guaranteed by the U.S. Government or its agencies or sponsored enterprises, from the requirements of § 704.6. As stated in the preamble to the recent corporate rule revisions, however, the Board did not intend for this exemption to apply to agency MBS in the context of sector limits. 75 FR 64786, 64806 (Oct. 20, 2010) (discussing paragraph 704.6(d)(1)(i)). As drafted, however, not only the sector limits apply to agency MBS, but the other requirements, including single obligor limits and credit rating requirements, inadvertently apply to agency MBS. This correction clarifies the list of exemptions in § 704.6(b) to make clear that Agency MBS are subject to the sector concentration limits in 704.6(d) but not the other requirements of § 704.6.

Appendix A, Model Form H

The rule as published included an incorrect date instruction on Model Form H in Appendix A. *Id.* at 64851. Model Form H included introductory text indicating that the form was for use before October 20, 2011. In fact, because Model Form H deals with perpetual contributed capital, the form should be used only on and after October 20, 2011. The correction replaces the phrase "before" with the phrase "on or after."

II. Interim Final Rule

NCUA issued an interim final rule with request for comment on November 24, 2010. As discussed in the preamble to the interim final rule, the Board issued the rule as an interim final rule because the changes were technical in nature and it was in the public interest to have these corrections become effective on the same date as the other revisions to the corporate rule. 75 FR 47173, 47174 (Oct. 20, 2010).

III. Summary of Comments

NCUA received two comments on the interim final rule, both from credit union trade associations. Neither commenter suggested changes to the rule text, but one of the commenters sought additional clarification regarding NCUA's treatment of commercial mortgage backed securities (CMBS) under the revised definition of CDO. The commenter requested that NCUA state its reasoning for the exclusion of CMBS from the definition of CDO and also state that if the structure of CMBS changes in a way that increases the corporates' risk of loss on these investments, NCUA will remove this exclusion.

This commenter appears to have misunderstood the effect of the change in the definition. The change operates to make CMBS a permissible investment for corporate credit unions—that is, securities collateralized by commercial mortgage *loans.* CDOs collateralized by mortgage *securities,* commercial or residential, remain prohibited under the definition of CDO. Investments in plain-vanilla CMBS, which are collateralized by loans, do not pose the same risk as investments in securities collateralized by other securities where an investor cannot as easily determine the quality of the underlying loans. Also, as the commenter correctly noted, corporate credit union investments in CMBS are subject to the sector concentration limits imposed under § 704.6(d). Finally, NCUA will continually monitor corporates' investments and make adjustments to the corporates' investment authorities where appropriate.

IV. Regulatory Procedures

Section D of the Supplementary Information to the November 2010 interim final rule sets forth the Board's analyses under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Executive Order 13132, and the Treasury and General Government Appropriations Act (Pub. L. 105–277, 112 Stat. 2681 1998). *See* 75 FR 71527—71528. Because the final amendments are clarifications and do not alter the substance of the analyses and determinations accompanying that final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.

List of Subjects in 12 CFR Part 704

Credit unions, Corporate Credit Union, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 17, 2011.

Mary F. Rupp,

Secretary of the Board.

Accordingly, the interim final rule amending 12 CFR Part 704, which was published at 75 FR 71526 on November 24, 2010, is adopted as a final rule without change.

[FR Doc. 2011–6755 Filed 3–22–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2011–0246; Amendment No. 91–321; SFAR No. 112]

RIN 2120–AJ93

Prohibition Against Certain Flights Within the Tripoli (HLLL) Flight Information Region (FIR)

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

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the Tripoli (HLLL) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

DATES: This action is effective March 21, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions about this final rule, contact: David Catey, William Gonzalez, or Steven Laurenzo, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. *Telephone:* 202–267–3732, 202–267–4080, and 202–267–8772, respectively. For legal questions contact: Lorna John, Office of the Chief Counsel, AGC–200, Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3921.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States (U.S.) and for the safety of U.S. civil operators, U.S.-registered aircraft, and U.S.-certificated airmen throughout the world. Also, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. The FAA's authority to issue rules for aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106(g), describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under international agreements. Furthermore, the FAA has broad authority under section 44701(a)(5) to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

I. Background

The FAA has safety and national security concerns regarding flight operations in the Tripoli FIR (HLLL). An armed conflict is ongoing in Libya and presents a potential hazard to civil aviation. The runways at Libya's international airports, including the main international airports serving Benghazi (HLLB) and Tripoli (HLLT) may be damaged or degraded. Air navigation services in the Tripoli (HLLL) FIR may also be unavailable or degraded. In addition, the proliferation of air defense weapons, including Man-Portable Air-Defense Systems (MANPADS), and the presence of military operations, including Libyan aerial bombardments and unplanned military flights entering and departing the Tripoli FIR (HLLL), pose a potential hazard to U.S. operators, U.S.-registered aircraft, and FAA-certificated airmen that might operate within the Tripoli FIR (HLLL).

On March 18, 2011, the UN Security Council adopted Resolution 1973. Paragraph 6 of that Resolution mandates a ban on all flights in the airspace of Libya, with certain exceptions detailed in Paragraph 7. Paragraph 7 also requires that any flights in Libya be coordinated with any mechanism established under Paragraph 8 of the Resolution.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Approval Based on Authorization Request of an Agency of the United States Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 112, § 91.1603(a), including a U.S. air carrier or a U.S. commercial operator for a charter to transport civilian or military passengers or cargo, the U.S. Government department, agency, or instrumentality may request the FAA approve persons covered under SFAR No. 112, § 91.1603(a) to conduct such operations.

An approval request must be made in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality of the U.S. Government; the letter must be sent to the Associate Administrator for Aviation Safety (AVS–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Electronic submissions are acceptable, and the requesting agency may request an electronic copy of the FAA's response. Electronic submissions to the FAA should be sent to *sfar112@faa.gov.* A single letter may request approval from the FAA for multiple persons covered under SFAR No. 112, § 91.1603(a), and/or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations within the Tripoli (HLLL) FIR where the proposed operation(s) will be conducted;

The request for approval must also include a list of operators, including subcontractors, with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) for specific flight operations in the Tripoli (HLLL) FIR. Additional contracted operators may be identified to the FAA at any time after the FAA approval is issued. Updated lists should be sent to *sfar112@faa.gov.*

If an approval request includes classified information, you may contact Aviation Safety Inspectors David Catey, William Gonzalez, or Steven Laurenzo for instructions on submitting it to the FAA. Their contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of the operation under SFAR No. 112, § 91.1603(c), does not relieve persons subject to the SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft will have to comply with the conditions of their certificate and Operations Specifications (OpSpecs). In addition, operators will have to comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the operation, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

When the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send a letter to the requesting department, agency, or instrumentality confirming that the FAA's approval is subject to the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator while still allowing the operator to achieve its operational objectives.

(2) Any approval will specify that the operation is not eligible for coverage under a premium war risk insurance policy issued by the FAA under section 44302 of chapter 443 of title 49, United States Code.

(3) If the operator is already covered by a premium war risk insurance policy issued by the FAA,[1] the FAA will issue

[1] Coverage under FAA premium war risk insurance policies is suspended as a condition of the premium war risk policy at any time an

Continued

an endorsement to the operator's premium war risk insurance policy that specifically excludes coverage for any operations in the Tripoli (HLLL) FIR, including operations under a flight plan that contemplates landing in or taking off from Libyan territory. The endorsement to the premium war risk insurance policy will take effect before the approval's effective date. The operator must further establish that it has obtained substitute war risk coverage for operations in the Tripoli FIR. Additionally, before any approval takes effect, the operator must submit to the FAA a written release of the U.S. Government from all claims and liabilities, and its agreement to indemnify the U.S. Government with respect to any and all third-party claims and liabilities relating to any event arising from or related to the approved operations in the Tripoli (HLLL) FIR. This waiver of claims does not preclude an operator from raising a claim under an effective non-premium war risk insurance policy issued by the FAA.

(4) Other conditions as determined by the FAA.

The FAA will issue OpSpecs to the certificate holder authorizing these operations. The FAA may impose additional conditions on operators through Operations Specifications or letters of authorization. The FAA will notify requesting departments or agencies of FAA approval of civil operations under agreement with a U.S. government agency of any additional conditions beyond those contained in the approval letter.

Request for Exemptions

Any operations not conducted under the approval process discussed above must be conducted under an exemption to this SFAR. A request by any person covered under SFAR No. 112, § 91.1603(a) for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth in this SFAR. Additionally, the endorsement of any premium war risk insurance policy and a waiver and indemnification agreement will also be required as a condition of any exemption issued under SFAR No. 112, § 91.1603(c). The FAA recognizes that there may be operations conducted by other States with the support of the U.S. government. These operations would not be permitted under the approval process; however, the FAA will process these exemption requests on an expedited basis and prior to any private exemption requests.

Regulatory Analysis

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. The FAA expects there will be some costs associated with this emergency rule, but is unable to quantify those costs at this time. However, the FAA also expects that few, if any, operators subject to this SFAR are actually operating in the Tripoli (HLLL) FIR given the current state of affairs. Accordingly, the costs of this SFAR would be minimal.

As the FAA Administrator I certify that this rule will not have a significant economic impact on a substantial number of small entities as defined in Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended. Because the rule is being issued for aviation safety, it is not considered an unnecessary obstacle to international trade under the Trade Agreements Act of 1979 (Pub. L. 96–39) and does not create an unfunded mandate for any entity.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Accessing the Government Printing Office's Federal Digital System at: *http://www.gpo.gov/fdsys/.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Libya.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. In part 91, add Subpart M, consisting of § 91.1603 to read as follows:

Subpart M—Special Federal Aviation Regulations

§ 91.1603 Special Federal Aviation Regulation No. 112—Prohibition Against Certain Flights Within the Tripoli (HLLL) Flight Information Region (FIR).

(a) *Applicability.* This section applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of U.S.-registered civil aircraft, except operators of such aircraft that are foreign air carriers.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations within the Tripoli (HLLL) FIR.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations within the Tripoli (HLLL) FIR under the following conditions:

(1) Flight operations are conducted under a contract, grant or cooperative agreement with another department,

operation is covered by non-premium war risk insurance through a contract with a department, agency, or instrumentality of the U.S. Government under 49 U.S.C. 44305.

agency, or instrumentality of the United States Government with the approval of the FAA, or by an exemption issued by the Administrator. The FAA will process requests for approval or exemption in a timely manner, with an order of preference first for those operations in support of U.S. government-sponsored activities, second for those operations in support of government-sponsored activities of another State with the support of a U.S. government agency, and third for all other operations.

(2) Flight operations are coordinated with any mechanism established by paragraph 8 of U.N. Security Council Resolution 1973 (2011).

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR parts 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This Special Federal Aviation Regulation will remain in effect for 3 years from the effective date. The FAA may amend, rescind, or extend this Special Federal Aviation Regulation as necessary.

Issued in Washington, DC on March 20, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–6942 Filed 3–21–11; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 119

Moratorium on New Exemptions for Passenger Carrying Operations Conducted for Compensation and Hire in Other Than Standard Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: This document announces a temporary moratorium on new requests, or changes to exemptions from certain sections of Title 14, Code of Federal Regulations (14 CFR) for the purpose of carrying passengers for compensation or hire on Living History Flight Experiences (LHFE). It explains the history of these exemptions and the reason for the temporary moratorium.

DATES: This moratorium becomes effective on March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Raymond Stinchcomb, General Aviation and Commercial Division, General Aviation Operations Branch (AFS–830), Flight Standards Service, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8212.

SUPPLEMENTARY INFORMATION:

Background

In 1996, the FAA granted an exemption from various requirements of part 91 and part 119 to an aviation museum/foundation allowing the exemption holder to operate a large, crew-served, piston-powered, multiengine, World War II (WWII) bomber carrying passengers for the purpose of preserving U.S. military aviation history. In return for donations, the contributors would receive a local flight in the restored bomber. Without these contributions, the petitioner asserted that the cost of operating and maintaining the airplane would be prohibitive.

The FAA determined that these airplanes were operated under a limited and experimental category airworthiness certificate. Without type certification under Title 14 Code of Federal Regulations (14 CFR) § 21.27, they are not eligible for standard airworthiness certificates. The high cost of type certification under § 21.27 makes this avenue impractical for operators providing living history flights. Comparable airplanes manufactured under a standard airworthiness certificate did not exist. Thus, the FAA determined that an exemption was an appropriate way to preserve aviation history and keep the airplanes operational. In granting the exemption, the FAA found there was an overwhelming public interest in preserving U.S. aviation history, just as the preservation of historic buildings, historic landmarks, and historic neighborhoods have been determined to be in the public interest. While aviation history can be represented in static displays in museums, in the same way historic landmarks could be represented in a museum, the public has shown support for and a desire to have these historic aircraft maintained and operated to allow them to experience flight in these aircraft.

A 2004 policy explicitly limited the scope of LHFE exemptions to WWII or earlier vintage airplanes. The reasons enumerated in the statement addressed both public interest (*e.g.* the unique opportunity to experience flight in a B–17 or B–24 while such aircraft can still be safely maintained) and public safety (*i.e.* older and slower multiengine airplanes allow time for appropriate corrective measures in the event of an in-flight emergency and such crews must meet FAA qualifications and training requirements). The FAA stated that the agency did not believe it prudent to grant exemptions from the FAA regulations to operators of supersonic jets.

In response to numerous requests to expand the scope of the exemptions, the FAA requested comments on a proposed policy in 2006, and subsequently published a new policy on October 9, 2007 (72 FR 57196).

The 2007 policy statement agreed to consider any request for exemption for passenger-carrying flights in non-standard category aircraft, especially former military turbine-engine-powered aircraft, on a case-by-case basis. For petitioners intending to operate experimental exhibition, surplus foreign or domestic aircraft, and/or turbojet or turbine-powered aircraft, it stated that the FAA would closely examine the proposed operation with respect to safety of flight, passenger safety considerations, and safety of the non-participating public during the operational period and within the operational area before approving a LHFE exemption. Other criteria included passenger/crew egress, emergency egress systems such as ejection seats, documentation or statistical make and model operational history, historical significance of the particular aircraft, maintenance history, operational failure modes, and aging aircraft factors. The 2007 policy also observed that some of the aircraft in question are complex in nature, requiring special skills to operate safely, and that military equipment such as ejection seat systems can pose additional risk to aircraft occupants, ground personnel, and non-participating bystanders on the ground.

Also in the 2007 statement, the FAA cautioned that those requesting an exemption from a particular standard or set of standards must demonstrate that (1) there is an overriding public interest in providing a financial means for a non-profit organization to continue to preserve and operate these historic aircraft, and (2) adequate measures

(including all conditions and limitations stipulated in the exemption) will be taken to ensure safety. The FAA further stated that "operations authorized under these exemptions are specifically not air tour, sightseeing, or air carrier operations" and that the agency "in determining the public interest derived in any grant of exemption of this nature, will take into consideration the number of existing operational aircraft and petitioners available to provide the historic service to the public."

Consistent with the 2007 policy statement, the FAA has accommodated several industry requests to allow operation of more modern-day military jet aircraft (*e.g.,* the McDonnell Douglas F–4 Phantom and the McDonnell-Douglas A–4 Skyhawk) under the LHFE policy. To ensure safety, there are over 45 conditions and limitations the exemption holder must comply with in order to operate under the provisions of the exemption. The FAA has found, however, that operators have sometimes misinterpreted these conditions and limitations as permitting operations that the FAA did not contemplate or intend.

FAA Policy

The evolution of LHFE operations in the private sector, along with availability of newer and more capable former military aircraft, has raised public safety and public policy concerns that the FAA needs to assess. Accordingly, the FAA is placing a moratorium on the issuance of any new LHFE exemptions, including addition of new aircraft to current exemptions. Current LHFE exemption holders can continue to operate under their current exemption. If the exemption is due to expire during the moratorium, the FAA will accept and process petitions to extend current exemptions in accordance with the established regulatory exemption process. If a change is required (*i.e.* removal of an aircraft) the FAA will accept these changes in accordance with the regulatory processes. Additionally, during the moratorium, as petitioners request extensions to their LHFE exemption, the FAA will add the following clarifying limitations to all LHFE exemptions to ensure consistent application of current LHFE policy: 1. Passengers are prohibited from manipulating the aircraft flight controls when the aircraft is operated under the LHFE exemption, and 2. No aerobatics may be performed in the aircraft while operating under the LHFE exemption. Finally, the FAA will begin its evaluation of the current LHFE exemption policies and practices, to include evaluation of safety to the paying members of the public who have an expectation of aircraft safety and who may not understand the inherent risks associated with such flight. The FAA expects to publish a new proposed LHFE policy for comment on or before September 30, 2012.

Issued in Washington, DC, on March 15, 2011.

John W. McGraw,

Acting Director, Flight Standards Service.

[FR Doc. 2011–6712 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–15–000; Order No. 748]

Mandatory Reliability Standards for Interconnection Reliability Operating Limits

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves three new Interconnection Reliability Operations and Coordination Reliability Standards and seven revised Reliability Standards related to Emergency Preparedness and Operations, Interconnection Reliability Operations and Coordination, and Transmission Operations. These Reliability Standards were submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. The Reliability Standards were designed to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by ensuring that the reliability coordinator has the data necessary to assess its reliability coordinator area during the operations horizon and that it takes prompt action to prevent or mitigate instances of exceeding Interconnection Reliability.

Operating Limits. The Commission also approves the addition of two new terms to the NERC Glossary of Terms.

In addition, the Commission approves NERC's proposed revisions to Reliability Standards EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2, which remove requirements for the reliability coordinator to monitor and analyze system operating limits other than interconnection reliability operating limits.

DATES: *Effective Date:* This Rule will become effective May 23, 2011.

FOR FURTHER INFORMATION CONTACT: Darrell Piatt (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6687.

A. Cory Lankford (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6711.

William Edwards (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6669.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Final Rule

Issued March 17, 2011.

1. Under section 215 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) approves three new Interconnection Reliability Operations and Coordination (IRO) Reliability Standards and seven revised Reliability Standards related to Emergency Preparedness and Operations (EOP), IRO, and Transmission Operations (TOP). The proposed Reliability Standards were submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards.[2] These Reliability Standards were designed to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by ensuring that the reliability coordinator has the data necessary to assess its reliability coordinator area during the operations horizon and that it takes prompt action to prevent or mitigate instances of exceeding Interconnection Reliability Operating Limits (IROL).[3] The Commission also approves the addition of two new terms to the NERC Glossary of Terms (NERC Glossary). In addition, the Commission approves NERC's proposed revisions to Reliability Standards EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2, which remove requirements for the reliability coordinator to monitor and analyze system operating limits (SOL)[4] other than IROLs.

2. In addition, the Commission asks the ERO to evaluate certain issues through ongoing standards development and working group projects and to develop appropriate revisions as necessary. These issues regard the scope of the reliability coordinator's responsibility under these and other IRO Reliability Standards. In particular, the Commission identifies, based on the comments received, certain issues regarding the delineation of the responsibility of the reliability coordinator to analyze, monitor and communicate to other operating entities the class of SOLs identified as "grid-impactive" SOLs by NERC.

I. Background

A. Mandatory Reliability Standards

3. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

B. Order No. 693 Directives

4. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 initial Reliability Standards filed by NERC, including the currently-effective IRO Reliability Standards.[5] Under section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to the IRO Reliability Standards to address certain issues identified by the Commission.

5. With respect to IRO–001–1, the Commission directed the ERO to develop modifications to eliminate the regional reliability organization as an applicable entity.[6] The Commission also directed the ERO to modify IRO–002–1 to require a minimum set of capabilities that must be made available to the reliability coordinator to ensure that a reliability coordinator has the capabilities it needs to perform its functions.[7] With respect to IRO–003–2, the Commission directed the ERO to develop a modification to create criteria to define the term "critical facilities" in a reliability coordinator's area and its adjacent systems.[8] The Commission also directed the ERO to modify IRO–004–1 to require the next-day analysis to identify control actions that can be implemented and effective within 30 minutes after a contingency. In addition, the Commission directed the ERO to consider adding Measures and Levels of Non-Compliance to Reliability Standards IRO–004–1 and IRO–005–1 that are commensurate with the magnitude, duration, frequency and causes of the violations and whether these occur during normal or contingency conditions.[9]

[1] 16 U.S.C. 824o (2006).

[2] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[3] NERC defines IROLs as the value (such as MW, MVar, Amperes, Frequency or Volts) derived from, or a subset of the SOLs, which if exceeded, could expose a widespread area of the bulk electric system to instability, uncontrolled separation, or cascading outages. *See* NERC Glossary, *available at http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

[4] NERC defines SOLs as the value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specific system configuration to ensure operation within acceptable reliability criteria. *Id.*

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 896.

[7] *Id.* P 908.

[8] *Id.* P 914.

[9] *Id.* P 935. NERC has subsequently replaced Levels of Non-Compliance with Violation Severity

Continued

6. The Commission also directed the ERO to conduct a survey on IROL practices and actual operating experiences by requiring reliability coordinators to report any violations of IROLs, their causes, the date and time, the durations and magnitudes in which actual operations exceed IROLs to the ERO on a monthly basis for one year beginning two months after the effective date of Order No. 693.[10] On October 31, 2008, NERC filed the results of its year-long survey with the Commission.[11] On February 8, 2009, NERC supplemented those results in a second filing.[12]

C. NERC Petition

7. On December 31, 2009, NERC submitted a petition to the Commission (NERC Petition) [13] seeking approval of proposed Reliability Standards IRO–008–1, IRO–009–1, and IRO–010–1a. Under these Reliability Standards, reliability coordinators must analyze and monitor IROLs within their Wide-Area [14] to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection. These Reliability Standards do not require the reliability coordinator to analyze and monitor SOLs other than IROLs or to take preventive action to avoid or mitigate SOL violations within their reliability coordinator area. In developing the proposed IRO Reliability Standards, NERC determined that it was necessary to retire or modify certain requirements from several existing Reliability Standards. Therefore, NERC proposed revisions to Reliability Standards EOP–001–1,[15] IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2, which remove requirements for the reliability coordinator to monitor and analyze SOLs other than IROLs. NERC also requests approval of new definitions "Operational Planning Analysis" and "Real-time Assessment."

8. These IRO Reliability Standards together with the proposed revisions to existing Reliability Standards divide responsibility for SOLs and IROLs between reliability coordinators and transmission operators according to the Functional Model.[16] In its Petition, NERC explains that having two entities with the same primary responsibility is not supported by the Functional Model.[17] However, NERC notes that these IRO Reliability Standards should not imply that the reliability coordinator will not look at its future operations with respect to specific SOLs.[18] NERC states that the reliability coordinator must look at its future operations with respect to specific SOLs to ensure that their transmission operators are taking actions at appropriate times, but the primary responsibility for SOLs rests with the transmission operators.

9. NERC explains that, under the new IRO Reliability Standards, the reliability coordinator retains overall visibility of all operations within its Wide-Area view, including some SOLs, although the transmission operator is primarily responsible for actions related to SOLs.[19] NERC states that the IRO Reliability Standards were developed in support of the authority and assignment of tasks in the Functional Model.[20] NERC explains that under the Functional Model, while reliability coordinators will assign their transmission operators tasks associated with IROLs, the reliability coordinator has ultimate responsibility for these tasks, and the reliability coordinator is sanctioned if these tasks are not performed as required by the Reliability Standards.[21]

10. NERC further explains that, in a similar fashion, the Functional Model assigns responsibility for SOLs that are not IROLs to the transmission operator. But, NERC states, this too is a shared responsibility.[22] NERC states that, where the Transmission Operator has primary responsibility for developing the SOLs within its transmission operator area, the transmission operator may request the assistance of its reliability coordinator in developing these SOLs. In addition, NERC points out that reliability coordinators are responsible for ensuring that transmission operators develop SOLs for its reliability coordinator area in accordance with a methodology developed by the reliability coordinator.[23] NERC states that the transmission operator must share its SOLs with its reliability coordinator, and the reliability coordinator must share any SOLs it develops with its transmission operator. NERC also states that the reliability coordinator monitors the status of some, but not all, SOLs.

1. IRO–008–1

11. Reliability Standard IRO–008–1 has the stated purpose of preventing instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by ensuring that the bulk electric system is assessed during the operations horizon. The proposed Reliability Standard applies to reliability coordinators. IRO–008–1 requires the reliability coordinator to use analyses and assessments as methods of achieving the stated goal. The Reliability Standard requires analysis of the reliability coordinator's Wide-Area ahead of time and during real-time. It also requires communication with the entities that need to take specific operational actions based on the analyses and assessments.

12. Reliability Standard IRO–008–1 contains three requirements. Requirement R1 requires each reliability coordinator to perform an Operational Planning Analysis to assess whether the planned operations for the next day within its Wide-Area will exceed any of its IROLs during anticipated normal and contingency event conditions. Requirement R2 requires the reliability coordinator to perform a Real-Time Assessment at least once every 30 minutes to determine if its Wide Area is exceeding any IROLs or is expected to exceed any IROLs. Requirement R3 requires a reliability coordinator to share the results of an Operational

Levels. *See Order on Violation Severity Levels Proposed by the Electric Reliability Organization,* 123 FERC ¶ 61,284 (Violation Severity Level Order), *order on reh'g,* 125 FERC ¶ 61,212 (2008).

[10] *Id.* P 951.

[11] NERC, Compliance Filing, Docket No. RM06–16–006 (filed Oct. 31, 2008).

[12] NERC, Compliance Filing, Docket No. RM06–16–006 (filed Feb. 8, 2009).

[13] North American Electric Reliability Corp., Dec. 31, 2009 Petition for Approval of Proposed New and Revised Reliability Standards for Operating Within Interconnection Operating Limits.

[14] The term "Wide-Area" is defined in the NERC Glossary, approved by the Commission. As defined, Wide-Area includes not only the reliability coordinators' area, but also critical flow and status information from adjacent reliability coordinator areas as determined by detailed system studies to allow the calculation of IROLs. *See* NERC Glossary *available at http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

[15] Concurrent with its Petition in this Docket, NERC filed a petition in Docket No. RM10–16–000 seeking approval of certain Emergency Preparedness and Operations Reliability Standards. NERC, Petition for Approval of Three Emergency Preparedness and Operations Reliability Standards, Docket No. RM10–16–000 (filed Dec. 31, 2009). As part of its Petition in RM10–16–000, NERC proposed to retire Requirement R3.4 of EOP–001–0. Each petition proposes unique changes to EOP–001–0 reflecting the distinct issues addressed by the respective Reliability Standards drafting teams. In this Final Rule, the Commission is addressing Version 2 of EOP–001 contained in Exhibit B of the NERC Petition which reflects both the IRO and the EOP proposed changes.

[16] NERC, *Reliability Functional Model,* version 5, at 30 (Dec. 2009), *available at http://www.nerc.com/files/Functional_Model_V5_Final_2009Dec1.pdf* (NERC Functional Model).

[17] In its comments, NERC cites specific tasks outlined in the Functional Model for the respective duties of the reliability coordinator and transmission operator with respect to SOLs and IROLs. NERC Comments at 14.

[18] NERC Petition at 77.

[19] *Id.* at 78.

[20] *Id.* at 7–9.

[21] *Id.* at 8.

[22] *Id.* at 9.

[23] NERC Reliability Standard FAC–011–1, Requirement R3.

Planning Analysis or Real-Time Assessment that indicates the need for specific operational actions to prevent or mitigate an instance of exceeding an IROL with those entities that are expected to take those actions.

13. NERC also requests approval of two new terms that appear in IRO–008–1: "Operational Planning Analysis" and "Real-time Assessment." Operational Planning Analysis is defined as:

> An analysis of the expected system conditions for the next day's operation. (That analysis may be performed either a day ahead or as much as 12 months ahead.) Expected system conditions include things such as load forecast(s), generation output levels, and known system constraints (transmission facility outages, generator outages, equipment limitations, etc.).

NERC states that the definition was designed to provide greater specificity regarding the day-ahead study.

14. The proposed term "Real-time Assessment" is defined as "[a]n examination of existing and expected system conditions, conducted by collecting and reviewing immediately available data." NERC states that the purpose of the new term is to assure that the reliability coordinator is required to conduct a real-time assessment, including situations in which the reliability coordinator is operating without its primary analysis facilities and has implemented the work-around requirements of IRO–002–2, Requirement R8.

2. IRO–009–1

15. As proposed, Reliability Standard, IRO–009–1 is designed to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by "ensuring prompt action to prevent or mitigate instances of exceeding [IROLs]." Proposed Reliability Standard IRO–009–1 applies only to reliability coordinators.

3. IRO–010–1a

16. NERC proposes the addition of a new Reliability Standard, IRO–010–1a [24] to the current suite of IRO Reliability Standards. IRO–010–1a is designed to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by mandating that the reliability coordinator have the data it needs to monitor and assess the operation of its reliability coordinator area.

17. The requirements in the Reliability Standard specify a formal request process for the reliability coordinator to explicitly identify the data and information it needs for reliability; and require the entities with the data to provide it as requested. The Reliability Standard applies to the reliability coordinator and to the other functional entities that must supply data to the reliability coordinator.[25] This includes entities that have been identified as owners, users, or operators of the Bulk-Power System.

D. Notice of Proposed Rulemaking

18. On November 18, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standards IRO–008–1, IRO–009–1, and IRO–010–1a; revised Reliability Standards EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2; and the two new NERC Glossary terms.

19. In the NOPR, the Commission agreed with NERC that it is appropriate to develop requirements for Reliability Standards that offer a clear division of responsibilities among reliability coordinators and transmission operators. In addition, the Commission sought ERO and public comment to ensure that the proposed Reliability Standards will not create a reliability gap by the inappropriate division of responsibilities for analyzing, monitoring and resolving SOLs and IROLs between transmission operators and reliability coordinators respectively.

20. In response to the NOPR, NERC and a number of parties filed comments. PJM Interconnection L.L.C., ISO New England, New York Independent System Operator, Inc., California Independent System Operation Corporation and Southwest Power Pool submitted joint comments (Joint Commenters). The Edison Electric Institute (EEI), Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and Western Electricity Coordinating Council (WECC) also submitted timely comments. American Electric Power Service Corp. (AEP) filed comments one day out-of-time.

II. Discussion

21. The Commission hereby adopts its NOPR proposals and approves new Reliability Standards IRO–008–1, IRO–009–1, and IRO–010–1a; revised Reliability Standards EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2; and the two new NERC Glossary terms: "Operational Planning Analysis" and "Real-time Assessment." In approving these Reliability Standards, the Commission concludes that they are just, reasonable, not unduly discriminatory or preferential, and in the public interest. These Reliability Standards serve an important reliability purpose in seeking to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by ensuring that the reliability coordinator has the data necessary to assess its reliability coordinator area during the operations horizon and that it takes prompt action to prevent or mitigate instances of exceeding IROLs. Moreover, they clearly identify the entities to which they apply and contain clear and enforceable requirements. Commenters addressed many of the Commission concerns discussed in the NOPR and in some areas the ERO has indicated that it is continuing to study some issues related to the Commission concerns. The Commission encourages the ERO, applying its technical expertise, to continue such reviews and make any necessary changes to applicable Reliability Standards.

A. Division of Responsibilities for SOLs and IROLs

22. In the NOPR, the Commission sought comment on a number of issues related to NERC's division of responsibilities for SOLs and IROLs between reliability coordinators and transmission operators. NERC acknowledges in its Petition that the transmission operator must develop and share its SOLs with its reliability coordinator, and the reliability coordinator must share any SOLs it develops with its transmission operator.[26] NERC also states that it is currently working on a project to identify a subset of SOLs, other than IROLs, that the transmission operator and reliability coordinator must continuously analyze and monitor.[27] Therefore, in the NOPR, the Commission sought comment on whether there is a need for reliability coordinators to continue to analyze, in addition to continuing to monitor and coordinate data on, SOLs other than

[24] Because the interpretation for IRO–010–1 was completed before the filing of IRO–010–1, NERC requests Commission approval of IRO–010–1a, which includes the standard as interpreted.

[25] The requirements in the standard are specifically applicable to the following functional entities: (1) Reliability coordinator[s]; (2) balancing authority; (3) generator owner; (4) generator operator; (5) interchange authority; (6) load-serving entity; (7) transmission operator; and (8) transmission owner.

[26] NERC Petition at 77.

[27] NERC identifies this as "Project 2007–03: Real-time Operations," *available at http://www.nerc.com/filez/standards/Real-time_Operations_Project_2007–03.html.*

IROLs.[28] The Commission also sought comment on whether the reliability coordinator should have a documented methodology for identifying the SOL information it needs to fulfill its responsibilities for day-ahead analysis, monitoring and real-time assessments, and operational control within the reliability coordinator's area.

23. The Commission requested information from NERC, reliability coordinators, and other interested entities on the current practices of reliability coordinators and transmission operators with respect to coordinating operational responsibilities for monitoring, day ahead and real-time assessments. The Commission also asked for comments on Bulk-Power System operations related to SOLs and IROLs, on the practical division of responsibilities for preventing and mitigating SOL and IROL violations, and the monitoring capabilities of the reliability coordinator with respect to IROLs as well as other SOLs. Additionally, the Commission asked whether a reliability coordinator can provide an accurate assessment of the Bulk-Power System to its transmission operators on a Wide-Area basis, without evaluating: (1) The operating environment of SOLs that will impact the transmission operators within the reliability coordinator's areas; (2) SOLs that have the potential to become IROLs; and, (3) the existing IROLs within the reliability coordinator area. The Commission further sought comment as to whether a transmission operator can provide reliable operating assessments or make reliable operating instructions on an SOL that is on the border between two different transmission operator's areas. The Commission also requested comment on whether the reliability coordinator should have responsibility to monitor certain SOLs other than IROLs, and whether such a responsibility would place an unreasonable burden on reliability coordinators.

24. The Commission noted that IRO–006–4.1 requires the reliability coordinator to model SOLs and IROLs in the Interchange Distribution Calculator (IDC) to perform the Transmission Loading Relief procedures. We sought comment on how reliability coordinators in the Eastern Interconnection select the SOLs for evaluation in the IDC and the extent of any burden this has caused the reliability coordinator.

25. Finally, the Commission also sought comments from NERC and the public as to how the current Functional Model represents the delineation of assessment and operating responsibilities between the reliability coordinator and transmission operator with respect to SOLs and IROLs.

Comments

1. Continued Analysis of SOLs by Reliability Coordinators

26. NERC states in its comments, that the proposed IRO Reliability Standards appropriately distinguish which entity has primary responsibility for SOLs. Further, Bulk-Power System reliability practices assign responsibilities for analyzing and resolving conditions to the entities closest to it, so that the entity with the closest eye to the condition can quickly assess and resolve it. NERC asserts that it is appropriate for transmission operators to maintain primary responsibility for SOLs, and for reliability coordinators to maintain primary responsibility for IROLs. NERC also explains that, while SOLs are typically associated with the prevention of facility damage or the accelerated degradation of equipment life, only a subset of SOLs are used to analyze and monitor local area reliability and, therefore, the proposed IRO standards are silent on the reliability coordinator's responsibility with respect to SOLs.

27. NERC notes in its Petition, that the proposed Reliability Standards "should not imply that the Reliability Coordinator will not look at its future operations with respect to specific SOLs."[29] NERC also states that "[t]he Reliability Coordinator retains the overall visibility of all operations within its Wide-Area view, including some SOLs, although the transmission operator is primarily responsible for actions related to SOLs."[30] NERC also notes that the reliability coordinator can monitor the transmission operator's actions to resolve SOLs and provides, as an example, that the reliability coordinator can study real-time operating trends to help determine whether an asset is trending toward a "grid-impactive SOL."[31]

28. In its comments, NERC provides the results of a survey conducted in response to the NOPR in which each of the nine reliability coordinators in the Eastern Interconnection responded that, for SOLs that it monitors, the SOLs were developed in a coordinated fashion with the transmission operators in its area. The survey responses did not suggest that any transmission operator withheld important SOL information from reliability coordinators, nor did any reliability coordinator indicate that transmission operators were not willing to work with the reliability coordinators in monitoring SOLs for Bulk-Power System reliability. NERC contends that this survey demonstrates that current operating practices are effective to ensure that reliability coordinators are able to obtain sufficient information from transmission operators in order to analyze and monitor certain SOLs other than IROLs.

29. NERC also notes that, since the completion of the proposed IRO standards, the industry has been working to improve the clarity of Reliability Standard requirements regarding the transmission operator's primary responsibility for SOLs through the Real-time Operations Standard Drafting Team (Project 2007–03). For example, NERC explains that the Standard Drafting Team has proposed to add a requirement to TOP–001–2 that would require each transmission operator to inform its reliability coordinator of all SOLs which, while not IROLs, have been identified by the transmission operator as supporting its local area reliability based on its assessment of its Operational Planning Analysis. NERC states that, by using tools that properly model Wide-Area conditions, the reliability coordinators are able to identify and help resolve lower-level issues that may not explicitly be included in the reliability coordinator modeling capabilities. EEI supports NERC's comments to the NOPR and believes that the Commission should encourage the NERC reliability coordinators working group to engage these issues with NERC stakeholders, especially the NERC Planning and Operating Committees.

30. The Joint Commenters support the proposed primary division of responsibilities for SOLs and IROLs between reliability coordinators and transmission operators. They contend, though, that the proposed division should not be interpreted as implying that a reliability coordinator should not monitor any SOLs. The Joint Commenters further contend that it was not intended that the proposed Reliability Standards would remove all responsibility for SOLs from the reliability coordinator, but to establish a clear distinction of responsibilities and authority. The Joint Commenters state that they would not support a formal

[28] Under NERC FAC–011–2, reliability coordinators must have a documented methodology for use in developing SOLs within its reliability coordinator area.

[29] NERC Petition at 9.

[30] NERC Petition at 10.

[31] NERC Comments at 7. NERC does not offer a definition of the term "grid-impactive SOL," but we understand it to mean an SOL that the reliability coordinator monitor so that it does not develop into an IROL.

requirement that would assign primary responsibility for analyzing and resolving SOLs to a reliability coordinator since the primary responsibility is correctly assigned to the transmission operator that is most familiar with their respective operating limits and local Bulk-Power System characteristics.

31. Midwest ISO states that it is necessary for reliability coordinators to analyze, monitor, and coordinate some SOLs other than IROLs and that the Reliability Standards should reflect this best practice. Midwest ISO believes the Commission should encourage the efforts currently underway at NERC towards the development of Reliability Standards addressing the role of reliability coordinators with regard to analyzing SOLs, other than IROLs, that are important to the reliable operation of the Bulk-Power System.

32. AEP states that it generally supports the proposed Reliability Standards but that it agrees with concerns raised by the Commission that if reliability coordinators are not monitoring other SOLs, there is a potential gap in monitoring for SOLs that have the potential to become IROLs. AEP argues that performing an annual IROL identification would be insufficient because it could miss some opportunities to identify these potentially new IROLs when they could be material. AEP asserts that, at a minimum, reliability coordinators should be required to be involved in SOLs that could border two different transmission operators' areas to ensure the activities are appropriately coordinated. AEP states that reliability coordinators and transmission operators should develop this subset of SOLs through joint analysis, or agreement. AEP requests that the Commission direct NERC to develop a modification to proposed Reliability Standards EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2, to require reliability coordinators to work together with transmission operators in developing and monitoring SOLs that border multiple transmission operators' areas.

2. Documented Methodology To Identify System Operating Limit Information

33. NERC asserts that, because proposed Reliability Standard IRO–008–1 requires reliability coordinators to use tools to model transmission and generation assets based on ratings provided by asset owners, it is unnecessary to impose an additional requirement that the reliability coordinator have a documented methodology for identifying the SOL information it needs because the systems and controls in place already provide the information needed by the reliability coordinators. The Joint Commenters also believe that such a methodology is unnecessary because, in its defined role, a reliability coordinator already will have access to, and be provided with, the appropriate set of SOLs from the transmission operator.

3. Current Practices for the Prevention and Mitigation of SOLs and IROLs and the Monitoring Capability of the Reliability Coordinator

34. NERC states that current practices give the reliability coordinators the ability to provide assessments of the Bulk-Power System to their transmission operators on a Wide-Area basis. NERC believes it is unnecessary to require reliability coordinators to have additional responsibility to monitor SOLs other than IROLs. NERC also notes that there are checks in place that allow the reliability coordinator to monitor SOLs that could turn into IROLs. As an example, NERC points out that IRO–010–1a requires reliability coordinators to conduct Operational Planning Analyses and Real-Time Assessments to identify any IROLs that may be exceeded.

35. NERC states that the electric power industry is predicated on interdependencies. NERC describes the interdependency of transmission operators and reliability coordinators as enabling the reliability coordinator both to control IROLs and flows, and to be aware of local issues, giving the reliability coordinator the ability to monitor SOLs that may become IROLs within the reliability coordinators areas. NERC further explains that it is working on Project 2007–03—Real-Time Operations to develop proposed revisions to the TOP standards that require a transmission operator to perform Operational Planning Analyses for its transmission operator area. NERC states that Project 2007–03 is considering revisions to the Reliability Standards that would require observation of SOL limits in adjoining areas.

36. The Joint Commenters state that the proposed IRO Reliability Standards hold reliability coordinators to the proper assessment of information required to provide accurate assessments on a Wide-Area basis. The Joint Commenters also caution that "accurate assessments" do not equate to precise results and the Commission should refrain from mandating that reliability coordinators provide accurate assessments.

4. Reliability Coordinator's Procedures for Selecting the SOLs for Evaluation by the Interchange Distribution Calculator

37. NERC states that reliability coordinators in the Eastern Interconnection select which SOLs to evaluate in the interchange distribution calculator based on information received from the transmission operators indicating that the transmission operator has a facility that is approaching or exceeding its SOL and/or IROL. NERC states that the interchange distribution calculator is a congestion management tool that helps the reliability coordinators deal with transmission constraints. In the survey conducted by NERC of reliability coordinators, one reliability coordinator responded that it publishes most of its information for use by any entity that may wish to use the information in its reliability assessments. Another reliability coordinator responded that it does not enter SOLs in its area into the interchange distribution calculator, but flowgates are entered into the interchange distribution calculator that may have SOLs or IROLs associated with them. Entering the flowgates allows an entity to determine if external schedules are impacting the flowgate.

5. Current Functional Model

38. NERC argues that Version 5 of the NERC Functional Model makes a clear distinction between the duties of the reliability coordinator and transmission operator with respect to SOLs and IROLs in certain task descriptions.[32] Similarly, the Joint Commenters state that the latest NERC Functional Model divides reliability components and allocates them to "unique" baskets of tasks which include a fundamental reliability task to do Wide-Area analysis and another task for local analysis.

Commission Determination

39. As we stated in the NOPR, we believe that it is appropriate for Reliability Standards requirements to offer a clear division of responsibilities among reliability coordinators and transmission operators. The preponderance of comments to the NOPR supports Commission approval of the Reliability Standards as proposed by NERC, including the proposed division of responsibilities. For the reasons described below, we approve the division of responsibility for SOLs and IROLs among transmission operators and reliability coordinators as expressed in the proposed Reliability Standards.

40. NERC and others suggest that these Reliability Standards are not

[32] *See* NERC Functional Model at 31, 37.

intended to remove all responsibility for the analysis and monitoring SOLs from the reliability coordinator. We agree. These Reliability Standards generally establish a clear distinction of primary responsibility for SOLs and IROLs between the transmission operator and reliability coordinator respectively. As NERC notes, however, the reliability coordinator will continue to have the ability and the responsibility to analyze and monitor SOLs that could turn into IROLs. For example, Requirements R5 and R6 of Reliability Standard IRO–002–2 require the reliability coordinator to monitor the important elements that could be critical to SOLs and IROLs within the reliability coordinator's area and surrounding reliability coordinator areas. In addition, the proposed IRO Reliability Standards require the reliability coordinator to conduct Operational Planning Analyses and Real-time Assessments of its reliability coordinator area. As NERC explained, the Operational Planning Analyses look at the expected system conditions and potential reliability impacts, with a focus on any impacts that affect the Wide-Area. Although a transmission operator lacks the tools to predict the impact on the surrounding transmission operator areas due to any changes in flow between inter-area facilities, a reliability coordinator addresses these facilities in its Wide-Area modeling capabilities.

41. As the Commission noted in its NOPR, Reliability Standard IRO–002–2 continues to require each reliability coordinator to monitor SOLs other than IROLs both within its reliability coordinator area and in surrounding reliability coordinator areas. Specifically, under Requirement R4 of IRO–002–2, each reliability coordinator must have detailed real-time monitoring capability of its reliability coordinator area and sufficient monitoring capability of its surrounding reliability coordinator areas to ensure that potential or actual SOL or IROL violations are identified and analyzed. In addition, under Requirement R5, each reliability coordinator must monitor bulk electric system elements such as generators, transmission lines, buses, transformers and breakers that could result in SOL or IROL violations within its reliability coordinator area. Further, as the Commission noted in the NOPR, the reliability coordinator must resolve potential or actual violations of SOL ratings by implementing a local or area-wide transmission loading relief procedure under Reliability Standard IRO–006–4.1.

42. Nevertheless, as noted by NERC and other commenters, there exists a subset of "grid-impactive" SOLs other than IROLs that the Commission believes may warrant closer analysis by the reliability coordinator, in addition to the analysis being conducted by the transmission operator, that focuses on whether these particular "grid-impactive" SOLs could become IROLs. The Commission believes that there can be considerable benefit derived from some overlap in the responsibility for analyzing and monitoring these "grid-impactive" SOLs since, by definition, every IROL emanated from an SOL. While the proposed Reliability Standards continue to commit the reliability coordinator to the analysis and monitoring of SOLs that may become IROLs, a subset of SOLs, such as these "grid-impactive" SOLs, may deserve a more defined analysis and monitoring role on the part of the reliability coordinator.

43. We acknowledge NERC's and industry's continuing efforts to improve the clarity of standard requirements regarding SOLs through the Real-time Operations Standard Drafting Team (Project 2007–03). We believe that the issues concerning the analysis and monitoring of "grid-impactive" SOLs that we note here can be raised and considered in this or other ongoing projects. NERC comments that it is working on Project 2007–03 to develop revisions to the TOP Reliability Standards that require transmission operators to perform operational planning analyses for their local areas. NERC also comments that this project is also considering revisions that would require that SOL limits in adjoining areas be observed. In addition, there are other open projects, such as Project 2006–06—Reliability Coordination, which is analyzing appropriate reliability coordinator functions and responsibilities. In consideration of these ongoing efforts, we will not direct specific modifications to these Reliability Standards and, rather, accept NERC's commitment to exercise its technical expertise to study these issues and develop appropriate revisions to applicable Standards as may be necessary.

44. Because the study and monitoring of SOLs and IROLs is an issue at the very core of Bulk-Power System reliability, the Commission agrees with EEI that the NERC Reliability Coordinators Working Group should engage the issues raised in this proceeding with NERC stakeholders, including the NERC Planning and Operating committees, to determine whether a need exists to further refine the delineation of responsibilities between the reliability coordinator and transmission operator for analyzing a class of "grid-impactive" SOLs. Depending on the results of that review, we further encourage NERC, working through its standard development process, to develop appropriate modifications to these and any other related Reliability Standards as necessary.

B. Operational Analyses and Real-time Assessments

45. In the NOPR, the Commission sought comment on the prudence of using an Operational Planning Analysis up to twelve months old. The Commission asked whether this timeframe is reasonable or whether the timeframe should be shorter to ensure that the analysis is not outdated. In addition, the Commission sought comment on whether the definition should include measurable criteria to determine whether it is appropriate to use an existing analysis.

46. Further, the Commission requested comments on the meaning of "immediately available data" within the proposed definition of the NERC Glossary definition of Real-Time Assessment. The Commission proposed to direct NERC to modify the definition of "Real-time Assessment" to specify that the type of data to be relied upon by a reliability coordinator in conducting a Real-time Assessment must be based on adequate analysis capabilities such as state estimation, pre- and post-contingency analysis capabilities (thermal, stability, and voltage), and wide-area overview displays referenced in Requirement R6 of IRO–002–2.

Comments

47. In response to the Commission's questions regarding the use of an existing Operational Planning Analysis, NERC states that it is unlikely that a reliability coordinator would deliberately rely on an Operational Planning Analysis that does not reflect its expected system conditions. NERC asserts that a reliability coordinator will rely on a twelve-month old operational planning analysis only if system conditions have not changed over that time period. NERC states that the proposed definition of Operational Planning Analysis was developed, based on stakeholder comments, to apply not only to studies conducted for the day ahead, but also for future use in possibly developing requirements for seasonal studies. Thus, NERC explains, the definition includes the option of performing an Operational Planning Analysis up to twelve months ahead. NERC further explains that the

definition includes key elements that provide measurable criteria in assessing an entity's Operational Planning Analysis.

48. In response to the Commission's questions regarding the proposed definition of Real-time Assessment, NERC and the Joint Commenters state that the industry is currently working towards consensus on the set of data and capabilities the reliability coordinators need to perform their tasks via the Real-time Reliability Monitoring and Analysis Capabilities Standards Development Team (Project 2009–02). Accordingly, NERC asks the Commission to refrain from directing modifications pending completion of the project.

Commission Determination

49. The Commission approves the definitions of "Operational Planning Analysis" and "Real-time Assessment" without modification.

50. The Commission agrees with NERC that the reliability coordinator should rely on a twelve-month old Operational Planning Analysis study only if system conditions have not changed from those originally studied. Consistent with the views of NERC, we expect that reliability coordinators will rely on Operational Planning Analysis that reflect expected system conditions. Accordingly, we accept the definition as proposed.

51. Similarly, we find it is unnecessary to direct NERC to modify the definition of "Real-time Assessment" to specify that the type of data to be relied upon by a reliability coordinator in conducting a Real-time Assessment as proposed in the NOPR. Instead, the Commission will allow industry to complete Project 2009–02, which is working towards consensus on the set of data and capabilities the reliability coordinators need to perform their tasks. We expect NERC to use its technical expertise to develop any modifications to the definition of Real-time Assessment as may be necessary as a result of this ongoing project.

C. Reliability Coordinator Actions To Operate Within IROLs

52. In the NOPR, the Commission sought comment on whether reliability coordinators should have action plans developed and implemented with respect to other SOLs apart from IROLs and if so, which SOLs.

Comments

53. NERC states that transmission operators already are responsible for developing action plans for preventing and/or mitigating conditions that cause facility ratings to be exceeded. NERC therefore contends that it would add confusion to the process to require both the reliability coordinator and transmission operator to develop action plans for every SOL.

54. Similarly, WECC does not believe that reliability coordinators should be required to have action plans developed and implemented for SOLs apart from IROLs. WECC argues that requiring the reliability coordinator to second guess rather than defer to the more granular view and detailed view of the transmission operators or balancing authorities undermines and substantially changes the roles of each function without any foreseeable benefit to overall reliability.

Commission Determination

55. The Commission agrees with NERC that requiring both the reliability coordinator and transmission operator to develop action plans for every SOL may add confusion to the process. As a result, the Commission approves IRO–009–1, without modification. However, the Reliability Coordinator Working Group should further study this issue and determine if there is a need for reliability coordinators to have action plans developed and implemented with respect to certain grid-impactive SOLs.

D. IRO–010–1a

56. In the NOPR, the Commission expressed concern that Reliability Standard IRO–010–1a does not require reliability coordinators to specify a list of minimum data needed for reliable operation of the Bulk-Power System. The Commission, therefore, sought comment on whether a minimum list of data is necessary for the effective sharing of data between neighboring reliability coordinators and, if so, what data should be included. The Commission also sought comment on how compatibility of data between neighboring reliability coordinators can be assured without a list of minimum data in this proposed Reliability Standard.

57. In its discussion of Reliability Standard TOP–003–1, the Commission noted that Requirement R3 of proposed Reliability Standard IRO–010–1a requires entities to provide data and information to the reliability coordinator in accordance with the reliability coordinator's specifications. The Commission expressed concern that this requirement does not specify outage coordination data and, therefore, the reliability coordinator may not receive adequate outage coordination data to support the Operational Planning Analysis. Accordingly, the Commission sought comment on whether IRO–010–1a should specify necessary outage coordination data.

Comments

58. NERC, the Joint Commenters and Midwest ISO contend that requiring a minimum list of data is not necessary for the effective sharing of data between neighboring reliability coordinators. NERC argues that requiring a list of minimum data not only could impair an entity's ability to provide the data to the reliability coordinator quickly, but could prevent a reliability coordinator from obtaining needed data quickly. NERC also notes that, during the development of the proposed Reliability Standard, the reliability coordinators that were polled indicated they already were receiving the data they needed without any issues and that the data and information they received varied from one reliability coordinator to another. The Joint Commenters argue that it is unnecessary to develop such a requirement because two interconnected parties can agree upon the appropriate type and level of data it needs from the other, taking into consideration their respective tools and capabilities. Midwest ISO argues that many reliability coordinators already have developed coordination agreements with their neighbors that identify the information necessary for effective data sharing. Midwest ISO contends that a generic list of minimum data could be inadequate to meet regional needs and could create conflicts with existing coordination agreements. Midwest ISO further contends that a minimum list could curb creativity and innovation as capabilities develop new uses for data.

59. NERC and the Joint Commenters also urge the Commission to refrain from requiring NERC to modify IRO–010–1a to specify the necessary outage coordination data for all reliability coordinators. They contend that such an approach would not account for the significantly varying facilities located within the reliability coordinators' area and allow for the flexibility to specify the data needed for its respective area.

60. Reiterating comments it raised during the standard development process, WECC opposes the requirement in R1.2 that the parties reach mutual agreement with respect to the format of the data and information that the reliability coordinator receives. WECC argues that, due to the large number of entities that must provide data to the reliability coordinator, the requirement for mutually agreeable formats may cause the reliability coordinator to receive data in a multitude of diverse formats. WECC also believes that

requiring mutually agreeable data formats could delay the submission of data by a submitting entity until agreement can be reached via negotiation or dispute resolution. WECC argues that more than one party is involved in the formulation of an agreeable format yet only a reliability coordinator will be found non-compliant when the reliability coordinator and transmission operators or balancing authorities within the reliability coordinator area fail to reach an agreement over an acceptable format.

Commission Determination

61. The Commission agrees with commenters that it is unnecessary to direct NERC to develop a specific list of minimum data for the effective sharing of data between neighboring reliability coordinators under Reliability Standard IRO–010–1a. NERC and other entities confirm that reliability coordinators currently obtain necessary data without such a specific list. In addition, as commenters point out, a minimum list may conflict with coordination agreements currently in place which identify the information necessary for effective data sharing. With regard to the concern expressed in the NOPR regarding outage coordination data, we accept that reliability coordinators currently obtain necessary data. If, in the future, reliability coordinators are not able to obtain the necessary outage coordination data, we would ask NERC to consider whether a Reliability Standard should be developed for the reliability coordinators to obtain such data.

62. In response to WECC's concerns about the submission of data in mutually agreeable formats under Requirement R1.2, we do not believe any modification is necessary. As NERC states in its Petition, by specifying that the format must be mutually agreeable, the standard supports efficiency by precluding the submission of data that is in a format that cannot be used. We agree. NERC states that current data exchange formats are acceptable. Therefore, entities can continue to utilize existing agreements regarding data exchange. While disputes may arise in the future, the Reliability Standard does not dictate a specific dispute resolution process in the interpretation leaving reliability coordinators and other entities options for informal resolution of a dispute on the format of data and flexibility in choosing a dispute resolution process to reach an agreement.

63. Accordingly, the Commission approves IRO–010–1a as submitted.

E. Violation Severity Levels and Violation Risk Factors

64. In the event of a violation of a Reliability Standard, NERC establishes the initial value range for the corresponding base penalty amount. To do so, NERC assigns a violation risk factor for each requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the requirement on the reliability of the Bulk-Power System. In addition, NERC defines up to four violation severity levels—Lower, Moderate, High, and Severe—as measurements for the degree to which the requirement was violated in a specific circumstance.

65. In Order No. 705, the Commission approved 63 of NERC's 72 proposed violation risk factors for the version one FAC Reliability Standards and directed NERC to file violation severity level assignments before the version one FAC Reliability Standards become effective.[33] Subsequently, NERC developed violation severity levels for each requirement of the Commission-approved FAC Reliability Standards, as measurements for the degree to which the requirement was violated in a specific circumstance.

66. On June 19, 2008, the Commission issued its Violation Severity Level Order approving the violation severity level assignments filed by NERC for the 83 Reliability Standards approved in Order No. 693.[34] In that order, the Commission offered four guidelines for evaluating the validity of violation severity levels, and ordered a number of reports and further compliance filing to bring the remainder of NERC's violation severity levels into conformance with the Commission's guidelines. The four guidelines are: (1) Violation severity level assignments should not have the unintended consequence of lowering the current level of compliance; (2) violation severity level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties;[35] (3) violation severity level assignments should be consistent with the corresponding requirement; and (4) violation severity level assignments should be based on a single violation, not a cumulative number of violations.[36] The Commission found that these guidelines will provide a consistent and objective means for assessing, *inter alia,* the consistency, fairness and potential consequences of violation severity level assignments. The Commission noted that these guidelines were not intended to replace NERC's own guidance classifications, but rather, to provide an additional level of analysis to determine the validity of violation severity level assignments.

67. On August 10, 2009, NERC submitted an informational filing setting forth a summary of revised guidelines that NERC intends to use in determining the assignment of violation risk factors and violation severity levels for Reliability Standards. NERC states that these revised guidelines were consistent with Commission's guidelines. On May 5, 2010, NERC submitted the subject informational filing as a supplement to its pending March 5, 2010 Violation Severity Level Order compliance filing.[37]

NERC Proposal

68. NERC proposes a complete set of violation severity levels and violation risk factors for proposed new Reliability Standards IRO–008–1, IRO–009–1, and IRO–010–1a. In addition, NERC proposes to apply the existing set of violation severity levels and violation risk factors assigned to the proposed modified requirements.

69. NERC states that it developed the violation severity levels for the new IRO Reliability Standards before the Commission issued its June 19, 2008 Order on violation severity levels.[38] NERC also notes that the proposed violation severity levels were developed before NERC proposed a new methodology for assigning violation severity levels and violation risk factors.[39] As a result, NERC states that some of the proposed violation severity levels do not comport with the Commission's guidelines on violation severity levels and some do not comport with the NERC's revised guidelines. NERC identified differences and committed to propose revisions to the violation severity levels.

[33] *Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 705, 121 FERC ¶ 61,296, at P 137 (2007).

[34] Violation Severity Level Order, 123 FERC ¶ 61,284.

[35] Guideline 2 contains two sub-parts: (a) the single violation severity level assignment category for binary requirements should be consistent and (b) violation severity levels assignments should not contain ambiguous language.

[36] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 17.

[37] North American Reliability Corporation, Filing of the North American Electric Reliability Corporation regarding the Assignment of Violation Risk Factors and Violation Severity Levels, Docket No. RR08–4–005 (filed May 5, 2010).

[38] *Id.*

[39] NERC, Informational Filing Regarding the Assignment of Violation Risk Factors and Violation Severity Levels, Docket Nos. RM08–11–000, RR07–9–000, and RR07–10–000 (filed Aug. 10, 2009).

70. Separately from NERC's Petition here, on March 5, 2010, NERC submitted the first of two VSL compliance filings (Filing 1) to the Commission's VSL Orders,[40] which contained the VSL assignments for the original set of 83 Reliability Standards approved by the Commission and NUC–001–2. In addition, NERC requested an extension for filing the remaining VSLs until the 3rd quarter of 2010. On July 6, 2010, the Commission issued a Notice of Extension of Time up to and including December 1, 2010, for Filing 2.[41] On December 1, 2010, NERC submitted a compliance filing to the Commission in Docket No. RR08–04–006 (Filing 2). In Filing 2, NERC submitted VSLs both for Reliability Standards that are pending at the Commission and Reliability Standards previously approved by the Commission. Filing 2 includes VSLs to supersede those in NERC's Petition in Docket No. RM10–15–000 for EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, IRO–008–1, IRO–009–1, IRO–010–1, IRO–010–1a, TOP–003–1, TOP–005–2, and TOP–006–2.[42]

NOPR Proposal

71. In the NOPR, the Commission proposed to accept the proposed violation risk factors and violation severity levels presented in NERC's petition. In addition, the Commission proposed to accept NERC's commitment to review the proposed violation risk factors and violation severity levels to ensure compliance with the Commission's guidelines. Accordingly, we proposed to direct NERC to submit a compliance filing within six months of the effective date of the final rule in this proceeding that would provide the results of NERC's review including any modifications necessary to comply with the Commission's guidelines on violation risk factors and violation severity levels.

Commission Determination

72. Because a determination has not yet been made regarding NERC's "roll-up" approach pending before the Commission in Docket Nos. RR08–4–005 and RR08–4–006, the Commission will defer discussion on the proposed violation risk factors and violation severity levels assigned to IRO–008–1, IRO–009–1, and IRO–010–1a, until after the Commission issues a final order acting on NERC's petition in these proceedings.

III. Information Collection Statement

73. The information collection requirements in this Final Rule are identified under the Commission data collection FERC–725A, "Mandatory Reliability Standards for the Bulk-Power System." The information collection requirements are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[43] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[44]

74. The Commission approves new Reliability Standards IRO–008–1, IRO–009–1, and IRO–010–1a; revised Reliability Standards EOP–001–1, IRO–002–2, IRO–004–2, IRO–005–3, TOP–003–1, TOP–005–2, and TOP–006–2; and the two new NERC Glossary terms: "Operational Planning Analysis" and "Real-time Assessment." The three new Reliability Standards (IRO–008–1, IRO–009–1 and IRO–010–1a, governing reliability coordinator analyses, operational actions and data collection) replace parts of the currently-effective Reliability Standards EOP–001–0, IRO–002–1, IRO–004–1, IRO–005–2, TOP–003–0, TOP–005–1 and TOP–006–1 approved by the Commission in Order No. 693.

75. Thus, this final rule does not impose entirely new burdens on the affected entities. With the exception of the addition of Interchange Authority as an applicable entity in IRO–010–1a, the currently-effective standards EOP–001–0, IRO–002–1, IRO–004–1, IRO–005–2, TOP–003–0, TOP–005–1 and TOP–006–1 require actions by the same applicable group of entities. IRO–010–1a clarifies that balancing authorities, generator owners, generator operators, interchange authorities, load-serving entities, reliability coordinators, transmission operators, and transmission owners shall provide data and information, as specified, to the reliability coordinator(s) with which it has a reliability relationship.[45] The requirements of IRO–008–1 and IRO–009–1 provide clarification from existing requirements, dictating the analysis and operational roles of the reliability coordinator.

76. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of September 28, 2010. According to the NERC compliance registry, there are 134 balancing authorities, 824 generator owners, 773 generator operators, 61 interchange authorities, 541 load-serving entities, 26 reliability coordinators, 178 transmission operators, and 332 transmission owners that would be involved in providing information. However, under NERC's compliance registration program, entities may be registered for multiple functions, and as such there is some duplication of functions regarding the number of registered entities that would be required to provide information. Given these parameters, the Commission estimates that the Public Reporting burden for the requirements contained in the final rule is as follows:

FERC–725A data collection	Number of respondents (A)	Number of annual responses (B)	Hours per respondent (C)	Total annual hours (A × B × C)
Reliability Coordinators distribution of data specification to entities	26	*1	8	208
Balancing Authorities, Generator Owners, Generator Operators, Interchange Authorities, Load-serving Entities, Reliability Coordinators, Transmission Operators, and Transmission Owners reporting data to their Reliability Coordinator	1,501	*1	8	12,008
Total				12,216

*As needed.

[40] *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284 (2008), *order on reh'g,* 125 FERC ¶ 61,212 (2008) (VSL Orders).

[41] *North American Electric Reliability Corporation,* Docket No. RR08–4–005 (Jul. 6, 2010) (granting an extension of time for submitting this VSL compliance filing up to and including December 1, 2010).

[42] *See* NERC, Compliance Filing, Docket No. RR08–4–006, at 2 n.6 (filed Dec. 1, 2010).

[43] 44 U.S.C. 3507(d).

[44] 5 CFR 1320.11.

[45] Proposed Reliability Standard IRO–010–1a, Requirement R3.

• *Total Information Collection Costs:* The Commission estimated that it would require 12,216 total annual hours for the information collection (reporting and recordkeeping) and that the average annualized costs would be $1,465,920 (12,216 hours @ $120/hour).

Title: FERC–725A, Mandatory Reliability Standards for the Bulk-Power System.

Action: Proposed Revision to FERC–725A.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves three Reliability Standards that pertain to interconnection reliability operating limits and seven modified Reliability Standards that pertain to emergency preparedness and operations, interconnection reliability operations and coordination, and transmission operations. This Final Rule also approves the addition of two new terms to the NERC Glossary of Terms. The Reliability Standards that pertain to interconnection reliability operating limits will require reliability coordinators and transmission operators to coordinate data on system operating limits and interconnection reliability operating limits. This Final Rule finds the Reliability Standards and related definitions just, reasonable, not unduly discriminatory or preferential, and in the public interest.

77. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Ellen Brown, Office of the Executive Director, 888 First Street, NE. Washington, DC 20426, E-mail: *DataClearance@ferc.gov,* Tel: (202) 502–8663, Fax: (202) 273–0873. Comments on the requirements of this final rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control Number 1902–0244, RIN 1902–AE17, and the docket number of this final rule in your submission.

IV. Environmental Analysis

78. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[46] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions directed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[47] Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act

79. The Regulatory Flexibility Act of 1980 (RFA)[48] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The requirements of this rule would apply primarily to reliability coordinators, which do not fall within the definition of small entities.[49] Moreover, the proposed Reliability Standards reflect a continuation of existing requirements for reliability coordinators and other entities to monitor, analyze, prevent, and mitigate the occurrence of operating limit violations on the Bulk-Power System. The one exception is the proposed new requirements in Reliability Standard IRO–010–1a for interchange authorities, which also do not fall within the definition of small entities. Based on the foregoing, the Commission certifies that this proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

80. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

81. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

82. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

83. These regulations are effective May 23, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6778 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

[46] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[47] 18 CFR 380.4(a)(5) (2010).

[48] 5 U.S.C. 601–612.

[49] The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–10–000; Order No. 747]

Planning Resource Adequacy Assessment Reliability Standard

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 215(d)(2) of the Federal Power Act, the Federal Energy Regulatory Commission approves regional Reliability Standard, BAL–502–RFC–02 (Planning Resource Adequacy Analysis, Assessment and

Documentation), developed by Reliability*First* Corporation (RFC) and submitted to the Commission by the North American Electric Reliability Corporation. The approved regional Reliability Standard requires planning coordinators within the RFC geographical footprint to analyze, assess and document resource adequacy for load in the RFC footprint annually, to utilize a "one day in ten years" loss of load criterion, and to document and post load and resource capability in each area or transmission-constrained sub-area identified. The Commission also approves four regional reliability definitions related to the approved regional Reliability Standard and the violation risk factors and violation severity levels assigned to the BAL–502–RFC–02 Requirements.

DATES: *Effective Date:* This Rule will become effective May 23, 2011.

FOR FURTHER INFORMATION CONTACT:

Karin L. Larson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8236.

Scott Sells (Technical Information), Office of Electric Reliability, Division of Policy Analysis and Rulemaking, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6664.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Final Rule

Issued March 17, 2011.

1. Under section 215(d)(2) of the Federal Power Act (FPA), the Commission approves regional Reliability Standard BAL–502–RFC–02 (Planning Resource Adequacy Analysis, Assessment and Documentation), developed by Reliability*First* Corporation (RFC) and submitted to the Commission by the North American Electric Reliability Corporation (NERC). The approved regional Reliability Standard requires planning coordinators within the RFC geographical footprint to analyze, assess and document resource adequacy for load in the RFC footprint annually, to utilize a "one day in ten years" loss of load criterion, and to document and post load and resource capability in each area or transmission-constrained sub-area identified. The Commission also approves four regional reliability definitions related to the approved regional Reliability Standard and the violation risk factors and violation severity levels assigned to the BAL–502–RFC–02 Requirements.

I. Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[1] In July 2006, the Commission certified NERC as the ERO.[2] Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are developed by a Regional Entity.[3] In Order No. 672, the Commission urged uniformity of Reliability Standards, but recognized a potential need for regional differences.[4] Accordingly, the Commission stated that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[5]

A. ReliabilityFirst

3. On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities.[6] In the Delegation Agreement Order, the Commission accepted RFC as a Regional Entity and accepted RFC's Standards Development Manual, which sets forth the process for RFC's development of regional Reliability Standards.[7] The RFC region is a less than interconnection-wide region that covers all or portions of 14 states and the District of Columbia.

B. Regional Reliability Standard BAL–502–RFC–02

4. On December 14, 2009, NERC submitted for Commission approval, in accordance with section 215(d)(1) of the FPA,[8] regional Reliability Standard BAL–502–RFC–02 and four associated new definitions.[9] NERC stated that the proposed regional Reliability Standard establishes requirements for planning coordinators in the RFC region regarding resource adequacy assessment, which subject matter is not currently addressed in NERC's continent-wide Reliability Standards.[10] The stated purpose of this regional Reliability Standard is to establish common criteria, based on "one day in ten years" loss of load expectation principles, for the analysis, assessment and documentation of resource adequacy for load in the RFC region.[11]

5. Regional Reliability Standard BAL–502–RFC–02 contains the following two main requirements. Requirement R1 requires each planning coordinator in RFC's footprint [12] to perform and document an annual resource adequacy analysis. The sub-requirements of Requirement R1 set forth the criteria to be used for the resource adequacy analysis. Requirement R2 requires each planning coordinator to annually document the projected load and resource capability for each area and transmission constrained sub-area identified in the analysis. The sub-requirements of Requirement R2 set forth the specific documentation requirements. Each of the two main requirements is assigned a violation risk factor (VRF) and violation severity level (VSL). RFC did not assign VRFs or VSLs to the sub-requirements.

6. The NERC Petition also includes the following four new regional definitions related to regional Reliability Standard BAL–502–RFC–02. First, "Resource Adequacy," which is defined as the ability of supply-side and demand-side resources to meet the

[1] *See* 16 U.S.C. 824o(e)(3) (2006).

[2] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[3] 16 U.S.C. 824o(e)(4).

[4] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 290; *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *Id.* P 291.

[6] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, at P 316–350 (Delegation Agreement Order), *order on reh'g,* 120 FERC ¶ 61,260 (2007).

[7] *Id.* P 339.

[8] 16 U.S.C. 824o.

[9] NERC Petition for Approval of Proposed RFC Regional Reliability Standard BAL–502–RFC–02, Docket No. RM10–10–000 (Dec. 14, 2009) (Petition).

[10] *Id.* at 7. NERC notes that it has a pending continent-wide project, Project 2009–05, Resource Adequacy Assessments, which is intended to address resource adequacy assessments.

[11] NERC Petition at 7.

[12] Currently, there are four registered planning coordinators in the RFC region: American Transmission Co., LLC; International Transmission Company (ITC Transmission); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); and PJM Interconnection, LLC (PJM).

aggregate electrical demand (including losses). Second, "Net Internal Demand," which is defined as the total of all end-use customer demand and electric system losses within specified metered boundaries, less Direct Control Load Management and Interruptible Demand. Third, "Peak Period," which is defined as a period consisting of two (2) or more calendar months but less than seven (7) calendar months, which includes the period during which the responsible entity's annual peak demand is expected to occur. Fourth, "Year One," the planning year that begins with the upcoming annual Peak Period. These four defined terms would apply in the RFC region only.

C. Notice of Proposed Rulemaking

7. On October 21, 2010, the Commission issued its Notice of Proposed Rulemaking (NOPR) proposing to approve regional Reliability Standard BAL–502–RFC–02, stating that the standard will improve the reliable operation of the Bulk-Power System by ensuring use in the RFC region of a common criterion, the "one day in ten years" principle, to assess resource adequacy during the planning horizon.[13] In the NOPR, the Commission proposed to direct RFC, at the time it conducts its scheduled five-year review of regional Reliability Standard BAL–502–RFC–02, to: (1) Add time horizons to the two main requirements, and (2) consider modifying the regional Reliability Standard to include a requirement that the planning coordinators identify any gap between the needed amount of planning reserves defined in Requirement R1.1 and the planning reserves determined from the resource adequacy analysis. The Commission also proposed to accept the four related definitions for inclusion in NERC's Glossary for use with RFC's regional Reliability Standards,[14] and proposed to defer ruling on the proposed VRFs and VSLs for the standard.

8. In addition, in the NOPR, the Commission sought clarification or comment on a few aspects of BAL–502–RFC–02. With respect to the regional Reliability Standard's resource adequacy analysis, the Commission sought comment on three issues: (1) The loss of load calculation; (2) consideration of the capacity benefit margin; and (3) evaluation of common mode outages. The Commission also sought comment on: (1) How planning coordinators, when conducting the resource adequacy analysis, will address load and resources outside of the RFC footprint; (2) whether planning coordinators should have a common process or procedure that addresses the planning reserves assessments; and (3) whether the planning coordinators have experienced problems collecting the data necessary to perform the resource adequacy analysis.

9. In response to the NOPR, comments were filed by 13 interested parties. These comments assisted us in the evaluation of BAL–502–RFC–02. In the discussion below, we address the issues raised by these comments. In addition, five entities filed motions to intervene and three state utility commissions filed notices of intervention. Appendix A to this Final Rule lists the entities that filed comments and interventions.

II. Discussion

10. In this Final Rule, the Commission approves regional Reliability Standard BAL–502–RFC–02 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. To that end, the Commission finds that BAL–502–RFC–02 satisfies the Order No. 672 factors on how the Commission determines whether a regional Reliability Standard is just and reasonable in that BAL–502–RFC–02: (1) Is clear and unambiguous regarding what is required and who is required to comply (planning coordinator); (2) has clear and objective measures for compliance and achieves a reliability goal (namely, providing a common framework for resource adequacy analysis, assessment, and documentation) using one effective methodology, and (3) is "more stringent" in that NERC's continent-wide standards currently do not address assessment of resource adequacy in the planning horizon.

11. The Commission also denies the requests made by NARUC, Ohio PUC, Borlick, and the Illinois Commerce Commission that the Commission hold a technical conference in this proceeding to "foster needed dialogue" by state regulatory commissions, economists, and stakeholders regarding the one in ten years criterion. First, the Commission finds that there is adequate information in the record in this proceeding to act on NERC's Petition. Second, the more appropriate venue to discuss technical details, such as the appropriateness of the one day in ten years criterion compared with other methodologies, is in the standards development process itself. The Commission's decision here does not preclude other entities, such as NERC, from holding technical conferences to foster further dialogue and to discuss improvements in criteria used for resource planning.

12. The following discussion addresses first, the two challenges to approval of BAL–502–RFC–02, the Commission's jurisdictional authority to approve a resource adequacy assessment standard and the propriety of using the one day in ten years criterion. As discussed below, on these two issues the Commission determines first, that it is within our authority to approve a resource adequacy assessment regional Reliability Standard and, second, that the one day in ten years criterion is a just and reasonable method to use to conduct resource adequacy assessments for purposes of BAL–502–RFC–02. Next, the Commission discusses the six issues on which we sought comment in the NOPR. Finally, the Commission discusses the following remaining issues related to BAL–502–RFC–02: (i) Missing time horizons, (ii) effective date, (iii) regional definitions, and (iv) VRFs and VSLs.

A. Challenges To Approving BAL–502–RFC–02

13. NERC, RFC and other commenters support approval of regional Reliability Standard BAL–502–RFC–02. NARUC and Ohio PUC raise concerns regarding the Commission's jurisdiction to approve this regional Reliability Standard. Commenters also raise concerns regarding the appropriateness of the one day in ten years criterion. These issues are discussed below.

1. Jurisdiction

Comments

14. NARUC and the Ohio PUC raise several jurisdictional arguments regarding the Commission's authority under section 215 of the FPA to approve regional Reliability Standard BAL–502–RFC–02. These comments are endorsed by the Illinois Commerce Commission. NARUC and the Ohio PUC argue that the Commission lacks jurisdiction under section 215 of the FPA to approve a regional Reliability Standard that pertains to resource adequacy, asserting that BAL–502–RFC–02 is, in reality, a capacity requirement that RFC has couched as a planning tool. The Ohio PUC quotes Order No. 672, in which the Commission stated: "The proposed Reliability Standard must address a reliability concern that falls within the requirements of section 215 of the FPA. That is, it must provide for the reliable operation of Bulk-Power System

[13] *Planning Resource Adequacy Assessment Reliability Standard,* 75 FR 66038 (October 27, 2010), FERC Stats. & Regs. ¶ 32,662 (2010) ("NOPR").

[14] NERC's Glossary lists each term that has been defined for use in one or more of NERC's continent-wide or regional Reliability Standards.

facilities. It may not extend beyond reliable operation of such facilities or apply to other facilities." [15] The Ohio PUC and NARUC argue that BAL–502–RFC–02 fails this parameter as it does not provide for the reliable operation of Bulk-Power System facilities. Specifically, they point to the definitions of "Reliability Standard" and "Reliable Operation" set forth in section 215 of the FPA, which definitions they argue make clear that Congress did not intend for a resource adequacy planning criterion to be the subject of a FPA section 215 Reliability Standard. They claim that the statutory definition of "Reliability Standard," specifically precludes the Commission from instituting any capacity requirements.[16] They next posit that the definition of "Reliable Operation" pertains to cascading outages, not the orderly shedding of load due to a capacity shortage.[17] The Ohio PUC argues that a lack of adequate resources to serve all "firm" load at current prices does not lead to "instability, uncontrolled separation, or cascading failures" in the Bulk-Power System. Thus, NARUC and Ohio PUC argue that BAL–502–RFC–02, which requires a resource adequacy assessment, does not address a reliability concern as resource adequacy issues are not relevant to the "Reliable Operation" of Bulk-Power System facilities as that term is defined in section 215 of the FPA.

15. NARUC and Ohio PUC also contend that resource adequacy is a traditional state concern that is outside of the Commission's domain. They argue that both capacity requirements and resource adequacy planning criteria involve economic and policy decisions that impact the reasonableness of rates, generation decisions and retail demand response programs, all of which are within the states' domain. The Ohio PUC states that a Commission-mandated resource adequacy Reliability Standard, such as BAL–502–RFC–02, infringes on a state's authority to balance need for capacity investments against the risk of curtailments. Following up on this point, the Ohio PUC states in a footnote that it is unreasonable for anyone to argue that planning coordinators would plan using one criterion and then use a different criterion to make the economic determination of what resources should be acquired as doing so would be a waste of the planning coordinator's time and resources.

16. NERC, RFC, and the PJM Power Providers respond to the jurisdictional questions raised by NARUC and Ohio PUC in their reply comments. In its Petition, NERC asserted that regional Reliability Standard BAL–502–RFC–02 does not adversely affect competition or cause restriction on the grid because it does not require entities to secure the needed resources as an outcome of the planning coordinators resource adequacy analysis. In their reply comments, NERC, RFC, and PJM Power Providers reiterate that BAL–502–RFC–02 is consistent with the provisions and stated goals of the Energy Policy Act of 2005.

17. NERC counters NARUC's and the Ohio PUC's comments, arguing that section 215(a)(3), which contains the definition of "Reliability Standard," does not preclude NERC from including a resource adequacy planning criterion. NERC states that the key distinction is between NERC's ability to include resource adequacy planning criterion in a Reliability Standard, which is clearly allowed under section 215(a)(3) and prior Commission orders, and NERC's ability to require the building or acquisition of new generating capacity, which is prohibited by section 215(a)(3) of the FPA. To support this argument, NERC quotes Order No. 672 in which the Commission stated:

> We agree with PG&E's recommendation that the Commission require the ERO to obtain information on resource adequacy and make related recommendations where entities are found to have inadequate resources. *Resource adequacy is a fundamental aspect of reliability.* The ERO is in a unique position to obtain and analyze information regarding resource adequacy across all regions of the Bulk-Power System in interconnected North America. *Although section 215(a)(3) of the FPA provides that the term Reliability Standard does not include any requirement to enlarge Bulk-Power System facilities or to construct new transmission capacity or generation capacity, it does not preclude the ERO from obtaining information relating to resource adequacy* for the purposes of making its required reports on the adequacy of the Bulk-Power System pursuant to section 215(g) of the FPA.[18]

NERC asserts that the common criterion established in regional Reliability Standard BAL–502–RFC–02 to be used to complete a resource adequacy assessment serves a reliability purpose as the "common criterion is necessary so that recommendations can be made in the [RFC] Region regarding inadequate resource adequacy requirements that could negatively impact the reliability of the bulk power system." [19]

18. RFC argues that Reliability Standards are not simply engineering standards and that many Reliability Standards, like BAL–502–RFC–02, involve long horizons and are intended to prevent the Bulk-Power System from coming anywhere near "instability, uncontrolled separation, or cascading failures." As an example, RFC cites to NERC Reliability Standard FAC–010, which requires planning authorities to identify system operating limits (SOLs) and interconnection reliability operating limits (IROLs) in the planning horizon. RFC also cites to NERC Reliability Standard TPL–001, which requires that the transmission system be able to supply projected customer demands over the range of forecast system demands under no contingency conditions for the planning horizon. With respect to proposed regional Reliability Standard BAL–502–RFC–02, RFC states that the resource adequacy data produced under the standard will be a "valuable reliability tool that can be used by registered entities in working to ensure, well in advance of any identified concerns, that 'instability, uncontrolled separation, or cascading failures' never occur." [20]

19. With respect to NARUC and the Ohio PUC's arguments that a resource adequacy assessment standard will infringe on areas within a state's jurisdiction, RFC responds that BAL–502–RFC–02 does not encroach on the authority of the states to make the policy decisions that weigh resource adequacy against cost. RFC notes that states within the RFC region are free to use the data and documentation developed under BAL–502–RFC–02 in imposing resource adequacy obligations and making policy decisions regarding what level of service they are willing to pay to achieve. RFC further asserts that each state commission remains the ultimate arbiter of economic decisions regarding how to balance capacity

[15] Ohio PUC Comments at 7, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 331.

[16] "Reliability Standard" is defined to mean "a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity." 16 U.S.C. 824o(a)(3).

[17] The term "Reliable Operation," as defined in section 215(a)(4) of the FPA, means "operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements."

[18] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 806 (emphasis added).

[19] NERC Reply Comments at 5.

[20] RFC Reply Comments at 11.

investments against the risk of curtailment as no economic decisions of any kind are mandated by BAL–502–RFC–02. RFC reiterates that the only enforceable mandate under BAL–502–RFC–02 is the obligation to perform and document the resource adequacy analysis in a consistent way across the RFC region.

Commission Determination

20. As explained herein, the Reliability Standard before us does not preclude or preempt any action by a state PUC with regard to resource adequacy. As the Commission has previously recognized, resource adequacy raises "complex jurisdictional concerns" which at times are at the "confluence of state-federal jurisdiction." [21] As the Commission stated in the order in which the Commission certified NERC as the ERO, with respect to FPA section 215(g), "Reliability Reports": [22]

> We agree * * * that the ERO's assessments of Bulk-Power System reliability and adequacy cannot themselves provide the basis for preempting state or regional transmission planning and resource adequacy programs. The Commission can, however, order the ERO to submit adequacy assessments, including recommendations that some entities are found to have inadequate resources. In addition, our regulations provide for a determination of consistency between state actions and a Reliability Standard, as well as an assessment of the Reliability Standard's effectiveness as the Commission may deem appropriate.[23]

Although the Commission was addressing the interplay between the ERO's role with respect to resource adequacy assessments and states' resource adequacy programs in the context of section 215(g), this interplay is equally relevant to the ERO's role with respect to the development of Reliability Standards because the Commission is acknowledging that FPA section 215 establishes resource adequacy assessments as being relevant to reliability and, further, that the reliability aspect of resource adequacy assessments does not preempt state action.

21. The Commission, by approving BAL–502–RFC–02, is not usurping, intruding on, or preempting any authority exclusively within a state's jurisdiction because, as recognized in Order No. 672, the FPA does not reserve authority for the states over all matters related to or that flow from "resource adequacy." Moreover, the "savings" provision in section 215, section 215(i)(3), is clear that nothing in section 215 shall be "construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such [State] action is not inconsistent with any reliability standard." As we have clarified in a prior order, the saving provision in section 215(i) is not a grant of new authority to the states, but merely preserves any authority states may have under state law "to take action to ensure the safety, adequacy, and reliability of electric service within that State, so long as such action is not inconsistent with any reliability standard * * *." [24] Thus, we do not agree with NARUC or the Ohio PUC that the approval of BAL–502–RFC–02 will impinge on states' jurisdiction over matters related to resource adequacy. BAL–502–RFC–02 does not touch the establishment of specific resource adequacy requirements, and thus does not intrude on the state's decisional authority with respect to building or acquisition of assets or capacity to meet resource adequacy needs.

22. With respect to the Ohio PUC's argument that by approving a regional Reliability Standard mandating the use of a specific resource adequacy planning criterion (the one day in ten years criterion), the Commission is establishing that criterion as the *de facto* criterion to be used to set resource investment requirements, this argument appears to be borne out of the Ohio PUC's concern regarding preserving its authority to set resource adequacy standards. The standard does not impinge on Ohio PUC's authority to set or determine how to meet resource adequacy standards. Contrary to the Ohio PUC's concerns, the Commission believes that establishing a common criterion for resource planning will provide states with a uniform framework of information regarding resource adequacy. The information the reliability assessments provide would then be available to the states to use or could serve as a platform on which to layer additional factors, such as costs, as the states see fit.

23. The Commission also finds that the proposed resource adequacy analyses and documentation requirements in BAL–502–RFC–02 fall within the definition of "Reliability Standard" as that term is defined in section 215(a)(3) and pertain to the "Reliable Operation" of the Bulk-Power System as that term is defined in section 215(a)(4). Under section 215(a)(3), the only type of requirement that is explicitly precluded from being part of an enforceable Reliability Standard is a "requirement to enlarge [bulk-power system facilities] or to construct new transmission capacity or generation capacity." [25] BAL–502–RFC–02 does not include any such requirement. Specifically, BAL–502–RFC–02 mandates planning, it does not require entities to secure any resources as an outcome of the resource adequacy assessment.

24. BAL–502–RFC–02 also falls within the definition of Reliability Standard, as it provides for the reliable operation of the Bulk-Power System because it serves to identify potential resource adequacy deficiencies in a planning horizon with time to mitigate projected resource adequacy problems before shortages of resources occur in the operating horizon. Shortages of resources in the operating horizon can lead to blackouts and even cascading outages. Under these conditions, operators may be continually challenged to balance load with energy to prevent major power or voltage swings across the grid that can lead to blackouts and cascading outages. Because the standard does not prescribe that action must be taken, entities with authority for planning and siting new resources, including demand response resources or any other resource type, can determine the appropriate course of action, if any, that should be taken, including performing additional resource adequacy studies. The standard therefore does not preclude or preempt any action by a state commission with regard to resource adequacy. The Ohio PUC argues that NERC and RFC "conflate[] resource adequacy with reliable operation of the Bulk-Power System," stating that the definition of "Reliable Operation" cannot be enlarged and manipulated to include planning to build such capacity.[26] The Commission finds that the Ohio PUC, in making this argument, is reading into BAL–502–RFC–02 a requirement that registered entities within RFC build or acquire new generating capacity. Such a requirement simply does not exist in BAL–502–RFC–02.

[21] *Cal. Indep. Sys. Operator Corp.,* 116 FERC ¶ 61,274, at P 1112 (2006) (stating that resource adequacy affects the ability of the operator of the interstate transmission grid to ensure reliable service).

[22] FPA section 215(g) provides that the "ERO shall conduct periodic assessments of the *reliability and adequacy* of the bulk-power system in North America." 16 U.S.C. 824o(g) (emphasis added).

[23] *North American Electric Reliability Corporation,* 116 FERC ¶ 61,062, at P 292 (2006) (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 805–806).

[24] *New York State Reliability Council,* 122 FERC ¶ 61,153, at P 33 (2008) (emphasis added).

[25] 16 U.S.C. 824o(a)(3).

[26] Ohio PUC Comments at 5–6.

25. Ohio PUC further argues that a lack of adequate resources to serve firm load does not lead to "instability, uncontrolled separation or cascading failures," which are hallmarks of the term "Reliable Operation." We disagree with the Ohio PUC's interpretation of the definition of "Reliable Operation" as stated in section 215. A more careful reading reveals that the "hallmarks" of this term, instability, uncontrolled separation or cascading failures, are not to occur upon the unanticipated failure of a system element. If resources cannot meet load, or are insufficient to provide a reserve margin above expected load, then instability, uncontrolled separation or cascading failures can result from the unanticipated loss of a system element. If this situation occurs, reliable operation is not achieved due to resource inadequacy. Thus, like other planning standards, BAL–502–RFC–02 provides for the reliable operation of the Bulk-Power System as it will help identify areas of concern that, if left unresolved, could result in future instability, uncontrolled separation, or cascading failures of the Bulk-Power System.

26. The only other affirmative limitation on the scope of Commission-approved and enforceable Reliability Standards under FPA section 215 is the savings clause in section 215(i)(2), which states: "This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services." [27] Regional Reliability Standard BAL–502–RFC–02 does not set any resource adequacy standards. Specifically, BAL–502–RFC–02 does not impose on any registered entity a resource adequacy obligation because the standard contains no requirement for an entity to construct or otherwise invest in additional transmission, distribution, or generation resources or capacity. Nothing in BAL–502–RFC–02 requires any entity to use or take any action with respect to the resulting resource adequacy assessment. Regional Reliability Standard BAL–502–RFC–02 only requires a resource adequacy analysis and documentation of such analysis. Importantly, the Commission is not, through BAL–502–RFC–02, setting, enforcing or in any way mandating the resource adequacy levels that are derived through the BAL–502–RFC–02 resource adequacy analyses. Accordingly, BAL–502–RFC–02 does not run afoul of the prohibitions in FPA sections 215(a)(3) or 215(i)(2).

2. One Day in Ten Years Criterion

27. Regional Reliability Standard BAL–502–RFC–02 requires planning coordinators to perform an annual resource adequacy analysis and calculate a planning reserve margin that meets the "one day in ten years" criterion.[28] The analysis must be "performed or verified separately" for: (i) Year one, (ii) for one year falling in the second through fifth years, and (iii) at least one year in the sixth through tenth years.[29]

Comments

28. Several commenters expressed that the "one day in ten years" criterion is not economically efficient, is outdated, and is too conservative of a requirement.[30] OCC comments that the "one day in ten years" criterion does not account for changes in the electric industry such as markets, demand response, energy advancements, distributed generation, energy efficiency or the smart grid. Thus, OCC recommends that the Commission consider alternative planning reserve margin methodologies rather than a conservative one day in ten years methodology. The Ohio PUC argues that the one day in ten years criterion has not been shown to be just and reasonable because: (1) The criterion is outdated; (2) it may negatively impact competition such as the development of price responsive demand; and (3) no analysis has been done to confirm that a one day in ten years criterion produces a reserve margin that reasonably balances the value of avoiding scarcity and the cost of maintaining the target reserve margin.

29. Carden supports annual resource adequacy assessments that are based on common criteria for reliability. Wilson comments that the conservative assumptions in a one day in ten years analysis often lead to less reliance on neighboring systems that results in excess generation.

30. Responding to these criticisms of the one day in ten years criterion, RFC points out that the only RFC stakeholder that voted against the BAL–502–RFC–02 cast a negative vote because that stakeholder favors implementing a continent-wide resource adequacy planning standard rather than a regional standard. RFC asserts that the one day in ten years criterion is just and reasonable because its use will ensure, for the first time, that similar assessments of resource adequacy are performed for every part of the RFC region, including in states that have deregulated electric markets, which will provide a consistent and mutually understandable target against which to assess adequacy. RFC rejects as unreasonable, burdensome and unnecessary the other commenters' suggestion that the one day in ten years criterion must be first proven to balance the benefit of avoiding scarcity with the cost of maintaining an appropriate reserve. RFC further notes that even though the criterion used in regional Reliability Standard BAL–502–RFC–02 could be improved in the future, that does not make the standard unreasonable now. To that end, RFC encourages interested parties to participate regularly in its regional Reliability Standards development process as well as at its informal stakeholder meetings.

Commission Determination

31. The comments on this issue reveal a level of disagreement regarding the appropriateness of using the "one day in ten years" criterion for an annual resource adequacy assessment. In approving this regional Reliability Standard, the Commission need not determine that the "one day in ten years" criterion represents the most effective or most economically efficient method of measuring resource adequacy. Rather, the Commission is to determine whether the proposed standard is just and reasonable, not unduly discriminatory or preferential, and in the public interest. Thus, in this case, the Commission considers whether the requirements in BAL–502–RFC–02 are a just and reasonable means of achieving the reliability objective of the standard. As noted by RFC in its reply comments, the reliability objective of BAL–502–RFC–02 is to provide a common framework for analyzing, assessing, and documenting resource adequacy, in part to resolve RFC's concerns regarding the lack of standardization and the lack of a measure for resource adequacy in deregulated states within its footprint.[31] The Commission finds that BAL–502–RFC–02 achieves the reliability objective of establishing a common criteria for analyzing, assessing and documenting resource adequacy in a

[27] 16 U.S.C. 824o(i)(2).

[28] The "one day in ten years" criterion is used to plan resource adequacy such that reserve margins are planned so that the expected frequency of loss of load due to inadequate resources does not exceed 0.1 events per year, which equates to one event in ten years.

[29] *See* proposed Reliability Standard BAL–502–RFC–02, Requirement R1.2.

[30] *See* Comments submitted by Borlick, Carden, OCC, Ohio PUC, and Wilson.

[31] RFC Reply Comment at 13.

just and reasonable manner through the imposition of the one day in ten years criterion for measuring resource adequacy. The Commission emphasizes that the one day in ten years criterion is one common approach for resource adequacy assessment, and by approving this regional Reliability Standard, the Commission does not establish the one day in ten years criterion to be the *de facto,* or the only acceptable metric for resource adequacy assessment. Rather, the Commission is acknowledging that the one day in ten years criterion is a well-established and common criterion for assessing resource adequacy.[32] The use of a known and understood criterion should result in consistent, transparent and understandable resource adequacy analyses within the RFC region, and thus meets the reliability goal of establishing a common criterion to assess resource adequacy.

32. The Commission does not disagree with commenters' arguments that the one day in ten years criterion could be improved upon as an assessment tool or replaced with another methodology, but this does not mean that RFC's proposed one day in ten years criterion is unjust or unreasonable. NERC endorsed the one day in ten years criterion in its Petition, stating that "experience has demonstrated that correlating generating capacity and customer load in a 'loss of load' methodology with a target of 'one day in 10 year' criterion has provided adequate generating capacity in real time operation * * * to supply all customer firm loads, even under extreme conditions."[33] The Commission further notes that approving this regional Reliability Standard with the one day in ten years criterion does not prevent future changes or improvements to this resource assessment methodology. Our approval of BAL–502–RFC–02 does not prevent RFC or NERC from proposing other methodologies from replacing the one day in ten years criterion to assess resource adequacy and determine a level of planning reserve margin necessary to maintain reliability of the Bulk-Power System.[34]

33. The only obligations under BAL–502–RFC–02 are analysis and documentation requirements. This regional Reliability Standard does not specify how the results of the analysis required in this standard are to be used. For example, BAL–502–RFC–02 does not require state commissions to use the resource assessment analysis resulting from BAL–502–RFC–02 for economic decisions regarding resource adequacy requirements. Thus, the Commission rejects the Ohio PUC's argument that the one day in ten years criterion is unreasonable because the criterion does not consider the economics of resource adequacy such as the cost of additional resources or the value of energy to the consumers whose service would be interrupted in the event of a shortfall. Certainly, the BAL–502–RFC–02 assessments will be available as a tool to help inform the policy decisions to determine the level of service entities are willing to pay for and resource adequacy requirements. However, the Commission repeats, these activities are not required by this regional Reliability Standard.

34. In response to the Ohio PUC's claim that BAL–502–RFC–02 was developed with limited visibility to and involvement by many of those most involved in resource adequacy issues, e.g., state commissions and economists, the Commission emphasizes that BAL–502–RFC–02 was developed through an open and transparent process, allowing anyone with an interest to participate.[35] As documented by RFC, during the standard development process, entities had multiple opportunities to express concerns regarding anything related to the regional Reliability Standard, including the one day in ten year criterion. The RFC *Reliability Standards Development Procedure* (RSDP) also includes an opportunity for submitting a "standard authorization request" to suggest a modification to any regional Reliability Standard or development of a new regional Reliability Standard. The Commission also notes that RFC will review BAL–502–RFC–02 at least every five years, thereby affording future opportunities for interested entities to participate in these reviews.

B. Issues Regarding Specific BAL–502–RFC–02 Requirements

35. In the NOPR, the Commission stated that it believes that the factors or characteristics to be considered in the resource adequacy analysis as set forth in Requirement R1 of BAL–502–RFC–02 are a technically sound means to set up the analysis for ascertaining the probability of not having enough resources in order to meet demand and avoid loss of load. In addition, the Commission sought clarification regarding three aspects of the resource adequacy analysis: (i) The loss of load calculation, (ii) use of capacity benefit margin; and (iii) the meaning of common mode outages.

1. Loss of Load Calculation

36. Regional Reliability Standard BAL–502–RFC–02, Requirement R1.1 states that the planning coordinator's assessment shall calculate a planning reserve margin that results in the sum of probabilities for loss of load for each planning year equal to 0.1, or comparable to "one day in ten years" when available capacity will not meet the load. With respect to the loss of load calculation, BAL–502–RFC–02 specifically identifies two circumstances that do not contribute to the loss of load probability: (1) Utilization of direct control load management[36] and (2) curtailment of interruptible load.[37] Notwithstanding these two exceptions to the loss of load probability, the Commission sought comment on how other system operator actions, such as voltage reduction or other, non-voluntary types of load reduction plans, would be modeled and documented in this analysis.[38]

Comments

37. RFC and Midwest ISO comment that real-time operating actions, like voltage reductions or other non-

[32] *See, e.g., Midwest Independent Transmission System Operator, Inc.,* 122 FERC ¶ 61,283, at P 108 (2008) (accepting the Midwest ISO's proposal to use the one day in ten years standard as reasonable and consistent with industry standard); *Devon Power LLC, et al.,* 110 FERC ¶ 61,313, at P 8 (2005) (noting that the ISO–NE uses as a regional planning criteria the one day in ten years criterion); *see also* North American Electric Reliability Council, Resource and Transmission Adequacy Task Force, *Resource and Transmission Adequacy Recommendations,* June 15, 2004, *available at http://www.nerc.com/docs/docs/pubs/Resource_and_Transmission_Adequacy_Recommendations.pdf* (survey of the criteria used for resource adequacy planning during 2003–2004 timeframe showed that of the eight regional reliability councils polled in the East, five use the one day in ten years LOLE criteria); PJM Interconnection, L.L.C., *PJM Generation Adequacy Analysis: Technical Methods Capacity Adequacy Planning* Department, at 1 (October 2003), *available at http://www.nerc.com/docs/pc/ris/PJM_Generation_Adequacy_Analysis_Technical_Methods.pdf* (stating "This 'one day in ten year' loss-of-load expectation (LOLE) is the standard observed in most NERC regions and is the basis for determining PJM's required Installed Reserve Margin (IRM).").

[33] NERC Petition at 10.

[34] *See e.g., Version One Regional Reliability Standard Resource and Demand Balancing,* 133 FERC ¶ 61,063, at P 30 (2010) (Order No. 740) (remanding regional Reliability Standard BAL–002–WECC–1).

[35] NERC Petition at 5–6, 19–21; RFC Reply Comments at 15–16.

[36] NERC defines direct control load management (DCLM) as "Demand-Side Management that is under the direct control of the system operator. DCLM may control the electric supply to individual appliances or equipment on customer premises. DCLM as defined here does not include Interruptible Demand." *Glossary of Terms Used in NERC Reliability Standards,* April 20, 2010 (NERC Glossary), *available at: http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

[37] The NERC Glossary defines Interruptible Load as "Demand that the end-use customer makes available to its Load-Serving Entity via contract or agreements for curtailment."

[38] NOPR, FERC Stats. & Regs. ¶ 32,662 at P 18.

voluntary types of load reduction plans are not intended to be included in the BAL–502–RFC–02 assessment. RFC and Midwest ISO explain that these types of load reduction are only considered during the operating horizon and are not included in planning time frame assessments to comply with requirements associated with the planning horizon.

38. Borlick, Midwest ISO, OCC, Ohio PUC and Wilson comment on various demand side resources and their inclusion or exclusion from the BAL–502–RFC–02 resource adequacy assessment. Borlick comments that price responsive demand should not be counted both in Requirement R1.3.1 (load forecast characteristics) [39] and in Requirement R1.4 (resource availability characteristics).[40] Midwest ISO states that the regional Reliability Standard does not limit which demand response programs are excluded from the loss of load calculation, thereby allowing for, not preventing, future innovations in demand side programs. OCC asserts that the NOPR and BAL–502–RFC–02 imply that voluntary curtailment services, including demand response, are completely excluded from consideration in the loss of load calculation. OCC further argues that complete exclusion of voluntary curtailment service from the loss of load calculation would undervalue demand response resources. OCC states that demand response resources should be taken into account in the loss of load calculation because they reduce the need for additional capacity. Accordingly, OCC urges the Commission to require including historical demand response rates for resources in the loss of load calculation. The Ohio PUC comments that price responsive demand is not accounted for in this regional Reliability Standard. Last, Wilson notes that approving BAL–502–RFC–02 could actually prevent demand response or price responsive demand from developing.

Commission Determination

39. Based on the Midwest ISO and RFC comments, the Commission accepts that for planning assessments conducted under BAL–502–RFC–02, typical system operator actions, such as voltage reduction or other non-voluntary types of load reduction plans should not be included given that they pertain to the operating, not planning, horizon. The Commission agrees with Borlick's comment, and emphasizes that any type of demand response program, including price responsive demand, should not be represented twice in the assessment under both Requirement R1.3.1 and Requirement R1.4. The clause contained in Requirement R1.4 for considering "Any other demand (Load) response programs *not included in R1.3.1*" (emphasis added) is sufficient to prevent any responsible entity from counting any type of demand response program multiple times within this assessment.

40. The Commission also agrees with Midwest ISO's comment that BAL–502–RFC–02's requirements are not so restrictive that they would limit any specific types of demand response programs from being included in the BAL–502–RFC–02 assessment. Contrary to the comments from OCC, Ohio PUC and Wilson, the requirements for conducting the BAL–502–RFC–02 assessment are general enough to include interruptible loads, voluntary curtailment services, price responsive demand, and other types of demand response programs, and therefore would not hinder the development of new programs or technologies related to demand-side resources. Regarding OCC's comment that BAL–502–RFC–02 completely excludes voluntary curtailment services from consideration in the loss of load calculation, thus undervaluing demand response, the Commission notes that demand response is addressed elsewhere in the assessment. While Requirement R1.1.1 makes clear that utilization of direct control load management or curtailment of interruptible demand shall not contribute to the loss of load probability, Requirement R1.1.1 does not prevent demand related resources from being considered under other parts of the assessment, such as under Requirement R1.3.1 or R1.4.

41. Specifically, the Commission agrees with OCC that historical demand response rates or performance should be considered in the BAL–502–RFC–02 assessment to determine the effectiveness of a demand response program and typical performance achieved by the demand response program. Assessing how resources, including demand side resources, have performed in the past, how a resource's performance changed over time, and how a resource's performance varied under different scenarios is an effective way to estimate how the resource might perform under the conditions considered for the analysis. To that end, the Commission notes that BAL–502–RFC–02, Requirement R1.3.2 includes "historical resource performance and any projected changes" as one of the resource characteristics to be considered in performing the resource adequacy analysis. Similarly, Requirement R1.4 requires consideration of resource availability characteristics of "any other demand (Load) response programs not included in R1.3.1," which could include historical performance of such demand response programs. Requirement R1.4 also requires the planning coordinator to document how and why each resource availability characteristic was included in the analysis, or why the characteristic was not included.

42. Based on the foregoing, the Commission affirms that the loss of load calculation performed under Requirement R1.1 of BAL–502–RFC–02 does not include typical system operator actions or non-voluntary types of load loss. The Commission further notes that demand response programs should be considered under aspects of a BAL–502–RFC–02 resource adequacy assessment, specifically under either R1.3.1 or R1.4 as appropriate.

2. Use of Capacity Benefit Margin

43. With respect to the capacity benefit margin (CBM), the Commission in the NOPR noted that the requirements do not explicitly state whether planning coordinators may rely upon CBM [41] to satisfy BAL–502–RFC–

[39] BAL–502–RFC–1, Requirement R1.3.1 sets forth the load forecast characteristics that are to be included and documented in the resource adequacy analysis. Specifically, Requirement R1.3.1 identifies the following six load forecast characteristics: (1) Median (50:50) forecast peak load; (2) load forecast uncertainty; (3) load diversity; (4) seasonal load variations; (5) daily demand modeling assumptions; and (6) contractual arrangements concerning curtailable/interruptible demand.

[40] BAL–502–RFC–1, Requirement R1.4 requires the consideration in the resource adequacy analysis of eight resource availability characteristics and documentation of how and why they were included in the analysis or why they were not included. The resource availability characteristics include: (1) Availability and deliverability of fuel; (2) common mode outages that affect resource availability; (3) environmental or regulatory restrictions of resource availability; (4) any other demand (load) response programs not included in R1.3.1; (5) sensitivity to resource outage rates; (6) impacts of extreme weather/drought conditions that affect unit availability; (7) modeling assumptions for emergency operation procedures used to make reserves available; and (8) market resources not committed to serving load within the planning coordinator area.

[41] NOPR, FERC Stats. & Regs. ¶ 32,662 at P 19. The NERC Glossary defines capacity benefit margin (CBM) as "the amount of firm transmission transfer capability preserved by the transmission provider for Load-Serving Entities (LSE), whose loads are located on that Transmission Service Provider's system, to enable access by the LSEs to generation from interconnected systems to meet generation reliability requirements. Preservation of CBM for an LSE allows that entity to reduce its installed generating capacity below that which may otherwise have been necessary without interconnections to meet its generation reliability requirements. The transmission transfer capability preserved as CBM is intended to be used by the LSE only in times of emergency generation deficiencies."

Continued

02's requirements. During the standard development posting period, RFC received comments regarding potential conflicts or lack of coordination between BAL–502–RFC–02 and the continent-wide NERC Reliability Standard MOD–004–1—Capacity Benefit Margin.[42] The Commission stated in the NOPR that it does not believe that BAL–502–RFC–02 conflicts with NERC Reliability Standard MOD–004–1. However, the Commission noted that there could be some confusion regarding whether CBM could or could not be used in order to meet the requirements of BAL–502–RFC–02,[43] and sought comment on the issue.

Comments

44. Carden, Midwest ISO, RFC and Wilson responded to the Commission's question regarding utilization of CBM to meet BAL–502–RFC–02's requirements. Carden and Wilson support allowing CBM to be used to meet the requirements for the planning reserve margins. Midwest ISO comments that BAL–502–RFC–02 correctly neither excludes nor includes the use of CBM to meet the requirements. RFC states that CBM alone cannot satisfy the regional Reliability Standard.

Commission Determination

45. Based on these comments, the Commission understands and agrees that the intent of BAL–502–RFC–02 is that while CBM may be used to meet the requirements, it is not mandatory to include CBM in the assessment. The Commission also understands and agrees, as RFC stated, that CBM cannot be the only source assessed in order to satisfy BAL–502–RFC–02's requirements.

3. Meaning of Common Mode Outages

46. With respect to Requirement R1.4, which requires the resource adequacy analysis to consider resource availability characteristics including "common mode outages that affect resource availability," the Commission sought comment on whether planning coordinators, when evaluating "common mode outages that affect resource availability" will consider only outages within the generation facility, or if the analysis will also consider outages of transmission facilities that would have an impact on resource or generator availability.[44]

Comments

47. Both Midwest ISO and RFC agree that Requirement R1.4 only explicitly requires common mode outages of resources, but does not limit the consideration of transmission outages that could affect resource deliverability. Midwest ISO further explains that Requirements R1.3.3 and R1.3.4[45] apply to transmission facilities within and outside of the planning coordinator area and these requirements properly allow for the inclusion and documentation of consideration of common mode outages within a study, while not explicitly requiring the consideration of common mode outages.

Commission Determination

48. Based on the RFC and Midwest ISO comments, the Commission understands that common mode outages discussed in Requirement R1.4 do not explicitly require consideration of transmission facility outages. Notwithstanding that Requirement R1.4 does not explicitly require consideration of transmission facility outages, the Commission agrees with the Midwest ISO that nothing in the standard limits a planning coordinator's flexibility to consider such outages.

49. Consistent with Midwest ISO comments, the Commission understands Requirements R1.3.3 and R1.3.4 apply to transmission facilities, specifically documenting transmission limitations that would prevent the delivery of generation reserves and considering transmission limitations impacting assistance from other interconnected systems. These transmission limitations could include, but do not explicitly require, outage assessments of transmission facilities that would result in preventing delivery of generation reserves. The Commission notes that the outage assessment would likely benefit from analyzing transmission facility outages that would directly impact the ability to deliver resources to demand, or decrease the amount of resources delivered to an area from interconnected systems. Not all transmission facilities would need to be included in the assessment as many individual transmission facilities would have minimal impact on resource deliverability. Thus, determining which transmission outages to assess would require some engineering judgment to determine the impact of the transmission outage on resource deliverability. The Commission encourages planning coordinators to consider transmission outages to determine which, if any, transmission outages have the greatest impact on delivery of resources and to include those limiting elements when evaluating common mode outages.

C. Other Issues Raised in NOPR

1. Missing Time Horizons

50. The NERC Petition explained that the template for Reliability Standards dictates that each main requirement in a Reliability Standard be assigned one of the following time horizons:[46] (1) Long-term Planning (a planning horizon of one year or longer), (2) operations planning (operating and resource plans from day-ahead up to and including seasonal), (3) same-day operations (routine actions required within the timeframe of a day, but not real-time), (4) real-time operations (actions required within one hour or less to preserve the reliability of the bulk electric system), and (5) operations assessment (follow-up evaluations and reporting of real time operations). In the Petition, NERC noted the absence of a time horizon in BAL–502–RFC–02 and explained that RFC had stated that it did not include time horizons because its Commission-approved Reliability Standard Development Process does not include time horizons as a required element in its template for Reliability Standards. As stated in the NERC Petition, RFC also noted that "the [BAL–502–RFC–02] focuses on 'planning oriented' subject matter for one year and beyond," and, as such, the appropriate time horizon, long-term planning, is relatively straight forward.[47]

51. In the NOPR, the Commission noted that it is important to identify the

Glossary of Terms Used in NERC Reliability Standards, April 20, 2010, *available at: http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.*

[42] *See* NERC Petition, Exhibit C, Comments from ITC Transmission.

[43] NOPR, FERC Stats. & Regs. ¶ 32,662 at P 19. Reliability Standard MOD–004–1 addresses CBM, or a capacity preserved for firm transmission transfer capability. Conversely, the Requirements in proposed Reliability Standard BAL–502–RFC–02 address an analysis regarding the capability of generation to serve the projected load. While CBM could be a method of meeting the Requirements of BAL–502–RFC–02, the two Reliability Standards do not contradict each other.

[44] NOPR, FERC Stats. & Regs. ¶ 32,662 at P 20.

[45] Requirements R1.3.3 and R1.3.4 list items that must be considered in conducting the BAL–502–RFC–02 resource adequacy analysis. R1.3.3 refers to transmission limitations that prevent the delivery of generation reserves. R1.3.4 refers to assistance from other interconnected systems including multi-area assessment considering transmission limitations into the study area.

[46] Time horizons are used as a factor in determining the size of a sanction. If an entity violates a Requirement and there is no time to mitigate the violation because the Requirement takes place in real-time, then, depending on the violation's specific facts, the sanction associated with the violation generally would be higher than it would be for violation of a Requirement that could be mitigated over a longer period of time. *See* NERC's "Time Horizons" document, available on NERC's Web site at *http://www.nerc.com/files/Time_Horizons.pdf.*

[47] NERC Petition at 24.

time horizons for each Reliability Standard, but acknowledged that time horizons are not critical to its determination of whether to approve a Reliability Standard. Moreover, the Commission agreed with RFC that with respect to BAL–502–RFC–02, the time horizon "long-term planning" can be gleaned from the context of the standard for the purpose of determining the severity of a violation risk factor, or for determining the penalty for a violation. Based on RFC's statement that it is moving towards requiring the assignment of time horizons as part of its standard drafting process, the Commission proposed to direct RFC to add time horizons to the two main requirements when RFC reviews BAL–502–RFC–02 at the scheduled five-year review.

Comments

52. RFC states in its comments that it does not oppose the Commission's proposal to direct RFC to add time horizons to BAL–502–RFC–02 during its scheduled five-year review. The only other commenter on the issue of time horizons, Midwest ISO, supports the NOPR's proposal, noting that time horizons should be specifically identified in Reliability Standards because they are a factor for determining the size of a sanction.

Commission Determination

53. The Commission agrees with the Midwest ISO that time horizons are a factor in NERC's determination of a penalty for a violation and acknowledges that RFC is modifying its standards development process such that it will include time horizons as an element in its regional Reliability Standards template. Accordingly, as proposed in the NOPR, the Commission directs RFC to add time horizons to the two main requirements when RFC reviews BAL–502–RFC–02 at the scheduled five-year review.

2. Proposed Effective Date

54. Proposed regional Reliability Standard BAL–502–RFC–02's stated effective date is "upon RFC Board approval," which occurred on December 4, 2008. In the NOPR, the Commission noted that, while the effective date for Commission approved Reliability Standards is generally "the first day of the first quarter after regulatory approval," with respect to BAL–502–RFC–02, no additional implementation time is necessary as the four registered planning coordinators in the RFC region are already subject to BAL–502–RFC–02 by the terms of the RFC membership agreement. Accordingly, the Commission proposed in the NOPR that BAL–502–RFC–02 become mandatory and enforceable on the effective date of the Commission's final rule approving the regional Reliability Standard.

Comments

55. Dominion is the sole commenter regarding the effective date. Dominion, noting the potential pitfalls that may occur when regions like RFC implement multiple effective dates for the same standard,[48] seeks two clarifications. First, Dominion requests that the Commission clarify that the effective date of regional Reliability Standard BAL–502–RFC–02 is the effective date of the Commission's final rule approving the standard and that the standard will be enforced prospectively only. Second, Dominion requests that the Commission clarify that all future regional Reliability Standards shall not have effective dates that are prior to the effective date of the Commission's order approving the regional Reliability Standard and that RFC should modify its governance documents accordingly.

Commission Determination

56. Under section 215(d)(2) of the FPA, it is clear that a proposed Reliability Standard "shall take effect upon approval by the Commission." Accordingly, a Reliability Standard cannot have an effective date in the United States that is prior to the effective date of the final rule issued by the Commission approving the Reliability Standard at issue. Thus, the effective date of BAL–502–RFC–02 is the effective date of this Final Rule, and further, BAL–502–RFC–02 first becomes enforceable upon this effective date.[49]

3. Provision of Data

57. In the NOPR, the Commission, noting that BAL–502–RFC–02 does not require other entities (load-serving entities, balancing authorities, transmission operators, resource planners, or transmission planners) to provide the planning coordinators subject to BAL–502–RFC–02 the necessary data for the resource adequacy analysis, sought comment on whether the planning coordinators have encountered problems with collecting necessary data in order to complete the resource adequacy assessment that is the subject of BAL–502–RFC–02.

Comments

58. In response, both RFC and the Midwest ISO report that, to their knowledge planning coordinators have not had problems collecting the necessary data.

Commission Determination

59. Based on the comments of Midwest ISO and RFC, and the fact that no entity has raised a concern about the ability of RFC's planning coordinators' to obtain the data necessary to comply with BAL–502–RFC–02, we are satisfied that no action is necessary now on this issue.

4. Consideration of Resources Beyond the RFC Footprint

60. In the NOPR, the Commission sought comment on how to address load and resources outside of the RFC footprint during a planning assessment and on how entities currently perform this task or other similar planning tasks where load and resources are located outside of boundaries required by the assessment.

Comments

61. RFC states that current Requirements R1.3.4, R1.6 and R1.7 address consideration of resources beyond the RFC footprint. Midwest ISO comments that while a common method for considering external support or modeling external systems appears beneficial, this would be an onerous task, and might limit valid methodologies for considering external support. Midwest ISO further comments that it considers resource adequacy on a footprint-wide basis, and includes resources outside of the RFC footprint, holding the entire Midwest ISO region to the "one day in ten years" criterion. Midwest ISO notes that if other regional entities develop potentially conflicting regional Reliability Standards, Midwest ISO could be subject to conflicting Reliability Standards for its planning coordinator footprint.

Commission Determination

62. The Commission agrees with RFC's comment that Requirements R1.3.4, R1.6 and R1.7 are a means to address consideration of resources outside of the RFC footprint. By identifying what assistance from external areas is included in the assessment (R1.3.4) and what capacity resources and load are included within the planning coordinator area (R1.6 and R1.7), an entity can determine the area for which the assessment is being performed, and whether or not that area includes areas beyond the RFC footprint. The Commission agrees with

[48] Dominion notes that with respect to BAL–502–RFC–02, the stated effective date is "upon RFC Board approval," which was December 4, 2008. However, under section 215 of the FPA, a Reliability Standard may not become effective until after Commission approval.

[49] For this Final Rule, the effective date is 60 days after publication in the **Federal Register**.

Midwest ISO that identifying a common process for all planning coordinators to use might be onerous and might limit valid methodologies for determining whether or not to consider resources or loads outside of the RFC footprint when conducting the BAL–502–RFC–02 resource adequacy assessment. However, the Commission expects that, as a foundational element of a reliability assessment, each planning coordinator would document its own consideration of resources and loads in the assessment.[50]

5. Planning Gap Identification

63. In the NOPR, the Commission noted that BAL–502–RFC–02 does not include a requirement to document any gap between the planning reserve margin calculated in Requirement R1.1 (the amount of planning reserve needed to ensure a "one day in ten years" criterion) and the actual planning reserve determined in the resource adequacy analysis. The Commission stated that it believes that it would be useful for planning coordinators to identify and document a deficiency in planning reserves to help ensure that entities are aware of potential risks regarding the capability to balance resources and demand in a planning timeframe. Accordingly, the Commission proposed to direct RFC, when reviewing BAL–502–RFC–02 during its scheduled five-year review, to consider modifying BAL–502–RFC–02 to include a new requirement to identify any gap between the needed amount of planning reserves defined in Requirement R1.1 and the planning reserves determined from the resource adequacy analysis. The Commission further clarified that this would be a documentation requirement only and would not require entities to install additional generation or transmission capacity.

Comments

64. RFC submitted the sole comment on this issue. RFC supports the proposal in the NOPR on this issue and stated that it "will consider modifying the Standard in its scheduled five-year review, to include a requirement to identify any gap between the needed amount of planning reserves defined in Requirement 1.1 and the planning reserves determined from the [Resource Adequacy] Analysis."[51]

Commission Determination

65. The Commission accepts RFC's commitment to consider, at the time of its five-year review, whether to add a requirement to BAL–502–RFC–02 that would require Planning Coordinators to identify any gap between the needed amount of planning reserves defined in Requirement R1.1 and the planning reserves determined from the resource adequacy analysis.

D. Regional Definitions

66. Regional Reliability Standard BAL–502–RFC–02 includes four new defined terms that apply only to the RFC region: Resource Adequacy, Net Internal Demand, Peak Period, and Year One. In the NOPR, the Commission proposed to accept the four new defined terms to be applicable only in the RFC region.

Comments

67. No comments were filed regarding the four regional definitions.

Commission Determination

68. The Commission approves the inclusion of the four new regional definitions related to BAL–502–RFC–02 in the NERC Glossary, specifically as RFC regional terms.

E. Violation Risk Factors/Violation Security Levels

69. With respect to BAL–502–RFC–02, RFC assigned VRFs only to the two main requirements and did not propose VRFs for any of the sub-requirements.[52] RFC assigned Requirement R1 a "medium" VRF and Requirement R2 a "lower" VRF. Requirement R1 is assigned a "medium" VRF based on RFC and NERC's conclusion that it is a Requirement in a planning time frame and, if violated, could affect the capability of the Bulk-Power System. Requirement R2 is assigned a "lower" VRF because it is a documentation only requirement and therefore is considered to be administrative. Similarly, RFC assigned VSLs only to the main Requirements, R1 and R2, of proposed BAL–502–RFC–02, and not to any of the sub-requirements. NERC notes that RFC's assignment of VRFs and VSLs only to the main requirements is consistent with NERC's "roll-up" proposal in its August 10, 2009 Informational Filing Regarding the Assignment of VRFs and VSLs.[53] NERC also stated that RFC followed applicable NERC and FERC guidance in developing the VSLs and VRFs for BAL–502–RFC–02.

70. In the NOPR, the Commission proposed deferring action on the proposed VRFs and VSLs assigned to BAL–502–RFC–02 until after the Commission acts on NERC's pending petition in Docket No. RR08–4–005, in which NERC proposes a "roll-up" approach for VRF and VSL assignments by which NERC would only assign VRFs and VSLs to the main requirements and not to the sub-requirements.

Comments

71. Borlick and Midwest ISO comment on the VRF and VSL assignments. The Midwest ISO states that the VRF for Requirement R1 should be assigned a lower VRF because Requirement R1 will never directly affect the electrical state of the RFC Region. Borlick makes a generic comment regarding VSLs, stating that "the assignment of qualitative [VSLs] to various infractions is too 'fluffy'."[54]

Commission Determination

72. A VRF is assigned to each Requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the requirement on the reliability of the Bulk-Power System. VRFs are either: Lower, medium or high.[55] The Commission has established guidelines for evaluating the validity of each VRF assignment.[56]

73. NERC will also define up to four VSLs (low, moderate, high, and severe) as measurements for the degree to which the requirement was violated in a specific circumstance. For a specific violation of a particular Requirement, NERC or the Regional Entity will

[50] For example, the PJM Manual 20: PJM Resource Adequacy Analysis, Section 3 provides "a guide for fostering consistency from year to year and across all related analysis," and further describes input data and models, including what is identified as the PJM area and areas adjacent to PJM referred to as the "World." *See* PJM Manual 20: PJM Resource Adequacy Analysis, Revision 3, 6/1/2007, at 17–28, *available at http://www.pjm.com/documents/manuals.aspx.*

[51] RFC Comment at 6.

[52] We note that in *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC ¶ 61,255, at P 45 (2009), the ERO proposed to develop VRFs and VSLs for requirements but not sub-requirements. The Commission denied the proposal as "premature" and, instead, encouraged the ERO to "develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors." As directed, on March 5, 2010, NERC submitted a comprehensive approach in Docket No. RR08–4–005, which is currently pending before the Commission.

[53] NERC Petition at 24.

[54] Borlick Comments at 7.

[55] The specific definitions of high, medium and lower are provided in *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, at P 9 (VRF Order), *order on reh'g,* 120 FERC ¶ 61,145 (2007) (VRF Rehearing Order).

[56] The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC's definition of the violation risk factor level; and (5) treatment of requirements that com-mingle more than one obligation. *See* VRF Rehearing Order, 120 FERC ¶ 61,145 at P 8–13.

establish the initial value range for the base penalty amount by finding the intersection of the applicable VRF and VSL in the base penalty amount table in Appendix A of its sanction guidelines. On June 19, 2008, the Commission issued an order establishing four guidelines for the development of VSLs.[57]

74. The Commission has reviewed the VRF and VSL assignments for BAL–502–RFC–02 and it is our view that both the VRFs and VSLs are consistent with the above-described Commission guidance. The Commission does not agree with Midwest ISO that Requirement R1 should be assigned a "lower" VRF instead of "medium." Midwest ISO states that the VRF for Requirement R1 should be "lower" because Requirement R1: (1) Will never directly affect the electrical state or capability of the bulk electric system, and (2) only establishes administrative requirements to conduct an analysis without compelling planning coordinators to take actions based upon the analysis. The Commission finds that Requirement R1 is not administrative in nature as it requires an analysis of the state of the Bulk-Power System in the planning horizon to be able to meet demand with available resources. While this standard does not specifically require planning coordinators to take action per the results of this analysis, not performing the analysis would create a lack of awareness of the Bulk-Power System's ability to meet demand with available resources during the planning horizon, which, if no actions were taken, could directly affect the electrical state or capability of the Bulk-Power System. Thus, the nature of Requirement R1 is consistent with NERC's definition of a "medium" VRF level rather than the "lower" level.[58]

75. With respect to Borlick's comment that the assignment of qualitative VSLs to various infractions is too "fluffy," the Commission finds this to be a generic concern regarding VSLs that is outside the scope of this proceeding.

76. Accordingly, the Commission approves the VRFs and VSLs assigned to the two main Requirements in BAL–502–RFC–02. Although the Commission is approving the VRFs and VSLs, which are assigned only to the main Requirements of the Reliability Standard, the Commission is not making any determination regarding NERC's and RFC's decision to apply its proposed "roll-up" approach to BAL–502–RFC–02, i.e., to not assign VRFs and VSLs to any Sub-requirement. The appropriateness of the roll-up approach is pending before the Commission in Docket No. RR08–4–005.

III. Information Collection Statement

77. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[59] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[60] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

78. The Commission solicited comments on the need for and the purpose of the information contained in regional Reliability Standard BAL–502–RFC–02 and the corresponding burden to implement it. The Commission received comments on specific Requirements in the regional Reliability Standard, which we address in this Final Rule. However, we did not receive any comments on our reporting burden estimates. The Commission has not directed any immediate modifications to the Requirements in the regional Reliability Standard being approved. Thus, the Final Rule does not affect the burden estimate provided in the NOPR.

Burden Estimate: Regional Reliability Standard BAL–502–RFC–02 requires planning coordinators within the RFC geographical footprint to analyze, assess and document resource adequacy, annually, and to document and post projected load and resource capability in each area and transmission-constrained sub-area identified in the resource adequacy assessment. BAL–502–RFC–02, which applies to four planning coordinators located in the eastern portion of the U.S., does not require the planning coordinators to file information with the Commission. It does require planning coordinators to develop, document, publically post, and retain certain information, subject to compliance monitoring by RFC. However, the Commission does not believe that approval of BAL–502–RFC–02 will result in a substantive increase in reporting burdens because the Reliability Standard implements the current, mandatory and enforceable practices in RFC. As RFC has represented, the affected RFC-member planning coordinators have been subject to these requirements since December 2008 and would continue to be subject to them even if the Commission did not approve BAL–502–RFC–02 as a regional Reliability Standard subject to Commission, NERC and RFC enforcement under section 215 of the FPA. As stated in the RFC's implementation plan for BAL–502–RFC–02, once this standard was approved by RFC's Board of Trustees, which occurred on December 4, 2008, the requirements under the standard became effective with respect to RFC members and subject to the enforcement mechanism under the "Term of Membership" in RFC's by-laws.[61] Thus, the Commission finds that the requirements to develop, document, and maintain information in the regional Reliability Standard are current and ongoing requirements for RFC members and, therefore, the Commission's proposed action in this Final Rule would not impose any additional burden on RFC-member planning coordinators. The proposed regional Reliability Standard is a new standard and was not included in the original standards submitted for review and approval by OMB. In addition, Commission approval of proposed regional Reliability Standard BAL–502–RFC–02 makes the standard mandatory and enforceable. Therefore, the

[57] *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 20–35 (VSL Order), *order on reh'g & compliance,* 125 FERC ¶ 61,212 (2008). The VSL guidelines are: (1) VSL assignments should not have the unintended consequence of lowering the current level of compliance; (2) the VSL should ensure uniformity and consistency in the determination of penalties; (3) a VSL assignment should be consistent with the corresponding requirement; and (4) a VSL assignment should be based on a single violation, not on a cumulative number of violations.

[58] The VRF Order guidance emphasizes consistency with NERC's definition of the VRF level. NERC defines a "medium" risk requirement, which will be assigned a medium VRF, as follows: "A requirement that, if violated, could directly affect the electrical state or the capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system. However, violation of a medium risk requirement is unlikely to lead to bulk electric system instability, separation, or cascading failures; or, a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly and adversely affect the electrical state or capability of the bulk electric system, or the ability to effectively monitor, control, or restore the bulk electric system. * * *." NERC Violation Risk Factor, *available at http://www.nerc.com/files/Violation_Risk_Factors.pdf.*

[59] 44 U.S.C. 3507(d).

[60] 5 CFR 1320.11.

[61] *See* RFC's Planning Resource Adequacy Analysis, Assessment and Documentation Implementation Plan, available online at *https://rsvp.rfirst.org/BAL502RFC02/SupportingDocuments/BAL–502–RFC–02_Implementation_Plan.pdf.*

Commission will submit this final rule to OMB for review and approval of the reporting requirements and propose a *de minimis* burden to reflect the prior implementation by RFC as part of its region's standard practices.

79. The Commission estimates that the increased Public Reporting Burden of approving BAL–502–RFC–02 is *de minimis* as follows:

Proposed data collection FERC–725–H	Number of respondents	Number of responses	Hours per respondent	Total annual hours
Registered planning coordinators [62] in the RFC region	4	1	10	40
Total				40

Information Collection Costs:

- *Total annual costs:* $2,651.41 ((40 hours/2080 hours/year) × $137,874/year).
- *Title:* FERC–725–H, RFC Regional Reliability Standard.
- *Action:* Collection of information.
- *OMB Control No:* To be determined.
- *Respondents:* Registered planning coordinators in the RFC region.
- *Frequency of Responses:* On occasion.
- *Necessity of the Information:* This Final Rule approves a regional Reliability Standard that requires planning coordinators to document and maintain, for the current and prior two years, their resource adequacy analyses and the projected load and resource capability subject to review by the Commission, NERC, and RFC to ensure compliance with the regional Reliability Standard.
- *Internal review:* The Commission has reviewed the regional Reliability Standard BAL–502–RFC–02 and determined that the standard's Requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

80. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this Final Rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference FERC–725H and the docket number of this final rule in your submission.

IV. Environmental Analysis

81. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[63] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[64] The actions taken in this Final Rule fall within this categorical exclusion as the regional Reliability Standard reflects a continuation of existing resource planning assessment requirements for these planning coordinators and is "new" only with respect to the fact that once approved by the Commission, it will be subject to enforcement by RFC, NERC or the Commission. Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act Certification

82. The Regulatory Flexibility Act of 1980 (RFA) [65] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[66] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[67] The entities to which the requirements of this Rule would apply, i.e., planning coordinators within the RFC region, do not fall within the definition of small entities. Moreover, the regional Reliability Standard reflects a continuation of existing resource planning assessment requirements for these planning coordinators and is "new" only with respect to the fact that once approved by the Commission, it will be subject to enforcement by RFC, NERC or the Commission. Based on the foregoing, the Commission certifies that this Rule will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

83. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

84. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

85. User assistance is available for eLibrary and the FERC's Web site during

[62] At this time, there are only four registered planning coordinators in the RFC region.

[63] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[64] 18 CFR 380.4(a)(2)(ii).

[65] 5 U.S.C. 601–612.

[66] 13 CFR 121.101.

[67] 13 CFR 121.201, Sector 22, Utilities & n. 1.

normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

86. These regulations, including regional Reliability Standard BAL–502–RFC–02, are effective May 23, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this Rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A: Entities That Filed Comments, Motions To Intervene or Notices of Intervention

Abbreviation	Commenter
Commenters	
Dominion	Dominion Resources Services, Inc.
Carden	Kevin Carden, Johannes Pfeifenberger, and Nick Wintermantel.
ICC	Illinois Commerce Commission.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
MRO	Midwest Reliability Organization.
NARUC	National Association of Regulatory Utility Commissioners.
NERC	North American Electric Reliability Corporation+.
OCC	Office of the Ohio Consumers' Counsel.
OMS	Organization of MISO States.
Ohio PUC	Public Utilities Commission of Ohio.
PJM Power Providers	PJM Power Providers Group.
RFC	Reliability*First* Corporation+.
Borlick	Robert L. Borlick.
Wilson	James F. Wilson.
Intervenors	
Constellation Energy Commodities Group, Inc.	
Dayton Power and Light Company.	
Designated FirstEnergy Affiliates*.	
Exelon Corp.	
New York State Public Service Commission.	
Pennsylvania Public Utility Commission.	
PSEG Companies.	
Public Utilities Commission of the State of California.	

+ NERC and RFC filed both comments and reply comments.

* The Designated FirstEnergy Affiliates include: Ohio Edison Co., Cleveland Electric Illuminating Co., Pennsylvania Power Co., Toledo Edison Co., American Transmission Systems, Inc., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., and FirstEnergy Solutions Corp.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–18–001; Order No. 743–A]

Revision to Electric Reliability Organization Definition of Bulk Electric System

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Commission denies rehearing and otherwise reaffirms its determinations in Order No. 743. In addition, the Commission clarifies certain provisions of the Final Rule. Order No. 743 directed the Electric Reliability Organization (ERO) to revise the definition of the term "bulk electric system" through the ERO's Reliability Standards Development Process to address the Commission's policy and technical concerns and ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network pursuant to section 215 of the Federal Power Act.

DATES: *Effective Date:* This order on rehearing and clarification will become effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

I. Order on Rehearing

Issued March 17, 2011.

I. Introduction

1. On November 18, 2010, the Commission issued a Final Rule (Order

No. 743)[1] directing the Electric Reliability Organization (ERO), through the ERO's Reliability Standards Development Process, to revise its definition of the term "bulk electric system" to address the Commission's technical and policy concerns, including inconsistency in application, lack of oversight and exclusion of facilities that are required for the Reliable Operation of the interconnected transmission network, and ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network, pursuant to section 215 of the Federal Power Act (FPA).[2] The Commission stated that it believes the best way to accomplish these goals is to eliminate the regional discretion in the current definition, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and establish an exemption process and criteria for excluding facilities that are not necessary for operating the interconnected transmission network. However, the Final Rule allowed the ERO to develop an alternative proposal for addressing the Commission's concerns with the present definition with the understanding that any such alternative must be equally efficient and effective[3] as the Commission's suggested approach in addressing the identified technical and other concerns, and may not result in a reduction in reliability.

2. In this order, we deny requests for rehearing of the Final Rule. Further, we grant in part, and deny in part, requests for clarification of the Final Rule, as discussed below.

A. Summary of Order No. 743

3. In Order No. 693, the Commission approved, with reservations, the current North American Electric Reliability Corporation (NERC) definition of the term "bulk electric system."[4] That definition provides:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.[5]

4. However, the Commission noted its concern that the current "bulk electric system" definition has the potential for gaps in coverage of facilities, and indicated that it would revisit the issue.[6] In Order No. 743, the Commission returned to the issue. The Commission identified several concerns with the current definition that may compromise reliability. The Commission indicated that Order No. 743's aim is to eliminate inconsistencies across regions, eliminate the ambiguity created by the current discretion in NERC's definition of bulk electric system, provide a backstop review to ensure that any variations do not compromise reliability, and ensure that facilities that could significantly affect reliability are subject to mandatory rules.[7] Thus, Order No. 743 directed the ERO to revise the definition of "bulk electric system" through the NERC Standards Development Process to address the Commission's concerns.[8] Order No. 743 also directed the ERO to develop an exemption process that includes clear, objective, transparent and uniformly applicable criteria for exempting facilities that are not necessary for operating the interconnected transmission grid.[9]

5. The Commission stated that it believes the best way to address the identified concerns is to eliminate the Regional Entities' discretion to define "bulk electric system" without ERO or Commission review, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and adopt an exemption process and criteria for excluding facilities that are not necessary to operate an interconnected electric transmission network. However, the Commission specified that NERC may propose a different solution that is equally efficient and effective as the Commission's suggested approach in addressing the Commission's technical and other concerns so as to ensure that all necessary facilities are included within the scope of the definition.[10]

B. Requests for Rehearing

6. The following entities have filed timely requests for rehearing or for clarification of Order No. 743: American Public Power Association (APPA); Consumers Energy Company (Consumers); Edison Electric Institute (EEI); Exelon Corporation (Exelon); National Rural Electric Cooperative Association (NRECA); New York State Public Service Commission (NYPSC); Portland General Electric Company (Portland General); Public Power Council; City of Redding, California (Redding); Public Utility District No. 1 of Snohomish County, Washington (Snohomish); Transmission Access Policy study Group (TAPS); Western Petitioners;[11] Wisconsin Electric Power Company (Wisconsin Electric); and Transmission Agency of Northern California (TANC).[12]

II. Discussion

A. Scope of Order No. 743 and Commission Directive

7. Section 215(d)(5) of the FPA authorizes the Commission to direct the ERO to submit to the Commission a new or revised Reliability Standard that addresses a specific matter identified by the Commission.[13] In Order No. 743, the Commission explained that this authority also includes the authority to direct the ERO to revise the definition of a term used in a Reliability Standard.

8. Pursuant to this authority, the Commission directed the ERO to modify the definition of "bulk electric system" in order to address certain technical and policy concerns identified by the Commission.[14] Specifically, the Commission observed that Regional Entities currently have broad discretion to define the parameters of the bulk electric system in their regions, and that the exercise of this discretion has led to inconsistencies in how facilities are classified within and among regions, to

[1] *Revision to Electric Reliability Organization Definition of Bulk Electric System,* Order No. 743, 75 FR 72910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010).

[2] 16 U.S.C. 824o (2006).

[3] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 31 (2007), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[4] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 75.

[5] *Id.* n.47 (quoting NERC's definition of "bulk electric system").

[6] *Id.* P 77.

[7] Order No. 743, 133 FERC ¶ 61,150 at P 2.

[8] *Id.* P 16.

[9] *Id.* P 112–115.

[10] *Id.*

[11] Blachly-Lane Electric Cooperative, Central Electric Cooperative, Inc., Central Lincoln People's Utility District, Clearwater Power Company, Consumers Power Inc., Coos-Curry Electric Cooperative, Inc., Douglas Electric Cooperative, Fall River Rural Electric Cooperative, Inc., Lane Electric Cooperative, Inc., Lincoln Electric Cooperative, Inc., Lost River Electric Cooperative, Northern Lights, Inc., Mason Public Utility District No. 3, Northwest Public Power Association, Northwest Requirements Utilities, Okanogan County Electric Cooperative, Inc., Pacific Northwest Generating Cooperative, Public Utility District No. 1 of Clallam County, Public Utility District No. 1 of Snohomish County, Raft River Rural Electric Cooperative, Inc., Salem Electric Cooperative, Salmon River Electric Cooperative, Inc., Umatilla Electric Cooperative, Utah Associated Municipal Power Systems, Washington Rural Electric Cooperative Association, and West Oregon Electric Cooperative, Inc.

[12] The California Public Utilities Commission (CPUC) filed comments on January 25, 2011. The Commission rejects the CPUC's comments as an untimely request for rehearing under Rule 713(b) of the Commission's Rules of Practice and Procedure.

[13] Order No. 743, 133 FERC ¶ 61,150 at P 29.

[14] *Id.* P 30.

the effect that some facilities necessary to reliably operate the interconnected transmission network have been excluded from the obligation to comply with mandatory Reliability Standards. The Commission stated that one means to address its concerns is to eliminate the regional discretion in the ERO's current definition, maintain the bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and establish an exemption process and criteria for excluding facilities the ERO determines are not necessary for operating the interconnected transmission network.[15] However, the Final Rule made clear, the ERO may develop an alternative proposal for addressing the Commission's concerns with the current definition and any such alternate proposal must be equally efficient and effective as the Commission's suggested approach for addressing the identified concerns, may not result in a reduction in reliability, and must be supported with a technical analysis that demonstrates and explains, with a technical record sufficient for the Commission to make an informed decision, how it provides the same level of reliability as the Commission's suggested solution.[16]

1. Identifying the Specific Matter To Be Addressed

9. NRECA requests clarification, or in the alternative rehearing, that the Commission seeks to resolve a narrow concern that ambiguity in the bulk electric system definition and lack of backstop review at NERC has permitted inconsistencies across regions, and that the Northeast Power Coordinating Council (NPCC) in particular has not made all facilities that could significantly affect reliability subject to the Reliability Standards. NRECA expresses concern that the Final Rule states in several places that NERC must address the Commission's "technical and other concerns" without specifying those concerns.[17] NRECA asks that the Commission clarify the specific matter and present a clear list of technical and other concerns to assist NERC in developing appropriate and responsive solutions.

10. NRECA further seeks clarification whether NERC, in exercising its technical expertise, may choose to address the specific concerns identified by the Commission through an alternative other than an amendment to the definition of bulk electric system. NRECA points out that, while Order No. 743 sets out a "preferred solution," it also allows the ERO to develop an alternative proposal for addressing the Commission's concerns. NRECA states that it is not clear from the Final Rule if the ERO has discretion whether and how it amends the definition of bulk electric system, or only how to amend the definition. NRECA seeks clarification, or in the alternative rehearing, that the ERO can comply with the Final Rule by filing an alternative approach that does not amend the definition, provided that the alternative addresses the Commission's concerns with inconsistency, lack of oversight and exclusion of facilities that are required for the reliable operation of the interconnected transmission network. According to NRECA, denying the ERO the ability to develop an alternative to amending the bulk electric system definition is tantamount to the Commission prescribing the text of a Reliability Standard and denies the ERO a full range of options in addressing the specific matter identified by the Commission.

Commission Determination

11. We clarify that the specific issue the Commission directed the ERO to rectify is the discretion the Regional Entities have under the current bulk electric system definition to define the parameters of the bulk electric system in their regions without any oversight from the Commission or NERC.[18] As we explained in the Final Rule, NPCC's use of this discretion has resulted in an impact-based approach to defining the bulk electric system that allows significant subjectivity in application and thus creates anomalous results.[19] While NPCC's use of its discretion brought the problems with the current definition to our immediate attention, the Commission's concern is potentially broader because any region could use its discretion to define the bulk electric system in a way that leads to similar inconsistent and anomalous results.

12. We decline to provide the clarification NRECA requests regarding NERC's ability to address the specific matter through means other than revising the definition, and also deny rehearing on the issue. As noted above, our concern with the current bulk electric system definition is rooted in the unfettered discretion granted therein to Regional Entities to define the term. Contrary to NRECA's claim, it is well within our section 215(d)(5) authority to direct NERC to address the specific issue we have identified—the overly broad definition. We have not directed the ERO to revise the definition to incorporate a specified result; rather, we require that the change address our concerns.

2. Standard of Review

13. NRECA requests clarification that the Commission is not imposing a higher standard of review in the Final Rule than permitted by section 215 of the FPA. NRECA explains that the Final Rule allows the ERO to develop an alternative to the Commission's suggested approach provided that it is "as effective as, or more effective than, the Commission's proposed approach" and must not "result in a reduction in reliability."[20] NRECA contends that this standard of review is not in the statute and, rather, that the Commission should clarify that it will judge by the statutory provision that the proposal provides for an "adequate level of reliability." NRECA contends that this phrase connotes a range of possible solutions. NRECA claims that the Commission's approach, which allows the Commission's suggested solution to serve as a benchmark for all subsequent proposals, suggests a different, higher standard than "adequate level of reliability."

Commission Determination

14. FPA section 215(d)(2) establishes the standard of review the Commission must apply to ERO submissions with respect to the content of Reliability Standards:

> The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.[21]

As the statute specifies, the standard of review the Commission must utilize is whether the proposed Reliability Standard or modification to a Reliability Standard is "just, reasonable, not unduly

[15] *Id.*

[16] *Id.* P 31, 74.

[17] NRECA at 11; *citing* Order No. 743, 133 FERC ¶ 61,150 at P 16, 31 and 96.

[18] Order No. 743, 133 FERC ¶ 61,150, at P 72.

[19] *Id.* P 77–78.

[20] NRECA at 38, *quoting* Order No. 743, 133 FERC ¶ 61,158 at P 141.

[21] 16 U.S.C. 824o(d)(2).

discriminatory or preferential, and in the public interest."

15. We disagree with NRECA's assertion that section 215(c)(1) establishes a standard of review the Commission must apply to ERO submissions. Section 215(c) sets forth the criteria the Commission must consider in certifying an ERO, and section 215(c)(1) specifies that one of the considerations for certification is whether the ERO applicant "has the ability to develop and enforce * * * reliability standards that provide for an adequate level of reliability of the bulk-power system." [22]

16. Certainly, whether a proposed Reliability Standard provides for an adequate level of reliability is included in the factors used in determining whether the proposal is just and reasonable, but it is not the standard of review.[23] The Commission's statement that any alternative proposal must be "as effective as, or more effective than, the Commission's proposed approach" and must not "result in a reduction in reliability" provides guidance regarding the Commission's view of what is necessary to produce not only an adequate level of reliability but also a result that accords with the section 215(d)(2) review criterion.[24]

B. Jurisdictional Issues

17. Entities claim that the Commission over-stepped its jurisdiction in three ways. First, they contend that the Commission exceeded its authority by requiring a bright-line 100 kV threshold for determining which facilities are included in the bulk electric system. Second, entities argue that Order No. 743 fails to recognize the statutory exclusion of facilities used in local distribution of electric energy. Third, entities claim that the Commission fails to give due weight to the ERO's technical expertise. Several requests for rehearing, such as the NYPSC, Public Power Council and Snohomish, merge these arguments together in more global claims that the Final Rule is in error and should be withdrawn.

1. 100 kV Bright-Line Threshold

18. The NYPSC and Public Power Council argue that the Commission's decision to "direct the ERO to define the bulk electric system as all facilities operated at 100 kV and above" is arbitrary and capricious.[25] They state that section 215(a) of the FPA explicitly excludes facilities used in local distribution of electric energy. Thus, the NYPSC reasons, "by defining the bulk-power system as all facilities operating at above 100 kV, the Commission exceeded its jurisdiction by encompassing facilities that are clearly part of the non-bulk power system * * *" [26] The NYPSC contends that the Commission incorrectly assumes that a facility is considered part of the bulk electric system simply because it is operated at or above 100 kV. The NYPSC recites evidence, presented in its Notice of Proposed Rulemaking (NOPR) comments, that facilities in New York City do not serve a bulk system function due to the high concentration of load served by those lines. While noting that the Final Rule dismissed this evidence, the NYPSC contends that "it is invalid to conclude that all facilities rated at 100 kV and above support the bulk-power system based on a belief that 'most' of those facilities are not involved in local distribution." [27] Similarly, Public Power Council and Snohomish contend that the Final Rule, by mandating a 100 kV bright-line test, will improperly classify many 115 kV distribution facilities in the Western Interconnection as bulk electric system facilities.

19. The NYPSC notes that the Final Rule explained that entities would have an opportunity to seek an exemption if they believe certain facilities should not be included in the bulk electric system. Based on this, the NYPSC claims that the Final Rule implicitly acknowledged that various non-jurisdictional facilities are included within the Commission's "redefinition" of bulk electric system. It also claims that this approach is inappropriate, i.e., the Commission cannot assume it has jurisdiction over facilities operated above 100 kV unless and until an entity demonstrates otherwise. The NYPSC claims that the Commission also conceded that the 100 kV threshold is overly broad because "several 115 and 138 kV facilities that some entities term as 'distribution' may be needed to reliably operate the interconnected transmission system." [28] According to the NYPSC, by stating that these facilities "may" be needed for reliability of the interconnected system, the Commission acknowledges that they may not be needed. Similarly, Portland General argues that the Commission cannot claim jurisdiction over any local distribution facilities and expresses concern that the above language from the Final Rule wrongly suggests that some local distribution facilities are jurisdictional under section 215.

Commission Determination

20. At the outset, the Commission emphasizes that Order No. 743 did not mandate or direct NERC to adopt a 100 kV bright-line threshold. Order No. 743 directed NERC to undertake the process of revising the bulk electric system definition to address the Commission's concerns about the broad discretion the current definition grants to Regional Entities to modify the definition without Commission or ERO oversight, and provided a suggested solution. Specifically, the Order directed the ERO to revise the definition of bulk electric system "through the NERC Standards Development Process to address the Commission's concerns." [29] The Commission stated its belief that one effective way to address those concerns would be to eliminate the regional discretion contained in the current definition, which allows Regional Entities to define the term without Commission or ERO oversight; maintain the threshold contained in the current definition, which includes all facilities operated at or above 100 kV except defined radial facilities; and adopt an exemption process and criteria for excluding facilities that the ERO determines are not necessary to operate an interconnected electric transmission network. The Final Rule, however, did not mandate this approach as it further provided that NERC "may propose a different solution that is as effective as, or superior to, the Commission's proposed approach." [30]

21. Order No. 743's approach is entirely within the Commission's statutory authority and properly allows the ERO to develop the revised bulk electric system definition using its technical expertise. We, therefore, reject the requests for rehearing arising from the inaccurate premise that the Commission mandated a 100 kV bright-line threshold. Beyond the concerns

[22] 16 U.S.C. 824o(c).

[23] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 320–338, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[24] *See Transmission Relay Loadability Reliability Standard,* Order No. 733–A, 134 FERC ¶ 61,127, at P 24–27 (2011) (stating that the Commission's detailed guidance on a possible approach to address its underlying concern, including a statement that any alternative approach must be "equally efficient and effective" does not establish a "rebuttable presumption" in favor of the Commission's suggested approach).

[25] NYPSC at 12; *see also* Public Power Council at 8–9.

[26] NYPSC at 13.

[27] NYPSC at 15.

[28] NYPSC at 17, *quoting* Order No. 743, 133 FERC ¶ 61,150 at P 37.

[29] Order No. 743, 133 FERC ¶ 61,150 at P 16.

[30] *Id.*

related to the Commission's authority, the substance of the arguments raised by the NYPSC, Public Power Council, Snohomish and Western Petitioners relate to the term "used in local distribution" and differentiating between local distribution and transmission, which we address below.

22. Further, we disagree with the NYPSC's claim that the Final Rule implicitly acknowledges that various non-jurisdictional facilities are included within the Commission's "redefinition" of bulk electric system. As we clarify herein, regardless of the 100 kV threshold, facilities that are determined to be local distribution will be excluded from the bulk electric system. Further, NERC has yet to develop a modified definition, so the NYPSC's claim is unfounded at this time.

2. Facilities Used in Local Distribution

23. Western Petitioners, Portland General, Snohomish, and Redding point out that section 215(a) of the FPA expressly exempts facilities "used in the local distribution of electric energy" and, in section 215(i), provides that the ERO "shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system." On this basis, Western Petitioners and Redding argue that the Final Rule errs by not clearly stating that the revised definition of bulk electric system must exclude all facilities that are used in local distribution. Western Petitioners suggest that the Final Rule, by emphasizing that the revised definition must include "all facilities necessary for operating an interconnected electric transmission network," including lower voltage facilities operated in parallel and in support of higher voltage facilities, "could sweep in numerous local distribution facilities." [31]

24. Similarly, Portland General claims that the Commission erred by failing to clearly and consistently acknowledge the statutory exclusion of facilities used in local distribution of energy. Portland General argues that the failure to clearly delineate this exclusion is inconsistent with *Detroit Edison Co.* v. *FERC,* 334 F.3d 48 (DC Cir. 2003), where the court rejected the Commission's interpretation of the phrase "used in local distribution" in section 201 of the FPA as rewriting the statute to exclude from the Commission's jurisdiction only facilities used exclusively in local distribution.

[31] Western Petitioners at 10; *see also* Public Power Council at 16.

Commission Determination

25. We disagree that the Final Rule is at odds with commenters' view. In Order No. 743, the Commission acknowledged that "Congress has specifically exempted 'facilities used in the local distribution of electric energy' " from the Bulk-Power System definition.[32] Since such facilities are exempted from the Bulk-Power System, they also are excluded from the bulk electric system. Therefore, the Commission agrees with Western Petitioners and others that facilities used in the local distribution of energy should be excluded from the revised bulk electric system definition.

3. Due Weight to Expertise of the ERO

26. As mentioned above, the NYPSC, Snohomish and Public Power Council characterize the Final Rule as mandating the ERO to develop a revised definition of bulk electric system that incorporates a nationally uniform, 100 kV bright-line test. Based on this understanding, they argue that the Final Rule's directive exceeds the Commission's authority under section 215(d)(5) of the FPA because it limits NERC's and the Western Electric Coordinating Council's (WECC) "substantial discretion" to develop Reliability Standards based upon their technical expertise. Public Power Council and Snohomish claim that the directive also denies the due weight to which the ERO or an Interconnection-wide Regional Entity is entitled pursuant to FPA sections 215(d)(2) and (3).

27. Public Power Council and Snohomish argue that the elimination of regional discretion directed in the Final Rule based on a desire for uniformity is unsupported. They also claim that this is inconsistent with the intent of Congress to allow for regional variation as evidenced by the provisions of section 215 that require the ERO to rebuttably presume that a WECC-developed Reliability Standard satisfies the statutory criteria for approval and that the Commission give due weight to WECC's expertise. Public Power Council and Snohomish also cite to the legislative history to support their claim that Congress recognized the need for regional differences and rejected a uniform, centralized approach. Further, they argue that "due weight" equates to "substantial deference" based on court precedent and statutory analysis.[33]

[32] Order No. 743, 133 FERC ¶ 61,150 at P 37.

[33] Snohomish at 18–19, *citing, e.g., City of Oconto Falls* v. *FERC,* 204 F.3d 1154 (DC Cir. 2000); Public Power Council at 19–20.

28. The NYPSC, Snohomish and Public Power Council claim that, while the Commission has authority under section 215(d)(5) of the FPA to require the ERO to address a specific matter, the Commission went beyond its authority pursuant to that provision by prescribing the particular content of a Reliability Standard. They contend that the ERO, in the first instance, should decide how the Commission's specific concerns are best addressed. The NYPSC acknowledges that the Commission indicated that the ERO has discretion to develop an alternative that is as effective as, or superior to, the Commission's bright-line approach, but claims that the "narrowly tailored guidance" limits the ERO's discretion and, thus, the Commission acted beyond its statutory authority. For all these reasons, according to the NYPSC and Public Power Council, the Commission abused its discretion in imposing a 100 kV bright-line rule, thereby denying NERC and WECC the opportunity to develop a different threshold or methodology based on their expertise.

Commission Determination

29. As indicated previously, Order No. 743 did not mandate a specific result. Rather, the Commission determined that NERC should use its technical expertise to develop a definition that addresses the Commission's concerns with regional discretion in the current definition. The present definition contains the 100 kV reference, and the Commission did not change it in Order No. 743, other than to suggest a solution that would remove "generally" from the current definition's reference to a 100 kV threshold and eliminate unchecked regional discretion. The Commission's suggestion of one way to address the enumerated concerns does not preclude NERC from proposing an alternate solution.

30. Public Power Council and Snohomish argue that there is no evidence supporting the Commission's decision to require NERC to develop a uniform national bulk electric system definition. However, uniformity, absent a showing that the alternative is more stringent or necessitated by a physical difference, has been a hallmark of the mandatory Reliability Standards construct since its inception. In establishing the framework for developing Reliability Standards, we adopted the principle that proposed Reliability Standards should "be designed to apply throughout the interconnected North American Bulk-Power System, to the maximum extent this is achievable with a single

Reliability Standard."[34] The same principle holds true for definitions contained within the Reliability Standards.

31. Moreover, we are not prohibiting the Interconnection-wide regional entities from arriving at their own regional differences. However, as we stated in Order No. 743, "[c]ommenters have not provided compelling evidence that the proposed definition should not apply to the United States portion of the Western Interconnection as a threshold matter."[35] Conversely, the Commission does have a compelling concern that the subjectivity and lack of ERO and Commission oversight embodied in the current definition could result in the problems we identified in the NPCC region occurring in other regions, further supporting adoption of a uniform national definition. As Order No. 743 indicated, establishing such a uniform national definition does not preclude a region from proposing a regional difference that is more stringent than the continent-wide definition, including a regional difference that addresses matters that the continent-wide definition does not, or a regional definition that is necessitated by a physical difference in the Bulk-Power System.[36]

32. The Commission finds that the arguments by Public Power Council and Snohomish that the Commission has failed to give due weight to NERC or an Interconnection-wide Regional Entity as required under sections 215(d)(2) and (3) are premature. Once NERC has developed a proposed bulk electric system definition, the Commission will evaluate the proposal and all supporting evidence and documentation under section 215(d)(2). Similarly, should one of the two Regional Entities organized on an Interconnection-wide basis develop a proposal for a regional bulk electric system definition, the ERO must evaluate the proposal according to requirements of section 215(d)(3).

C. Challenges to Order No. 743's Technical Rationale

1. 100 kV Bright-Line Threshold

33. The NYPSC, Public Power Council, and Snohomish request rehearing, claiming that the Commission erred in directing NERC to revise the bulk electric system definition to include facilities operated at 100 kV and above where the record lacks a technical justification for a bright-line test. The NYPSC contends that, because the bright-line 100 kV threshold adopted by the Commission was not based on whether those facilities are necessary for operating the interconnected network, the Commission's decision lacked a technical justification. The NYPSC claims that the Commission's approach results in a "superficial consistency" and that Order No. 743 contains no factual analysis as to why 100 kV is the appropriate threshold. It contends that the examples identified by the Commission "that are purported to support the 100 kV bright-line were all 115 kV or higher."[37]

34. Further, the NYPSC argues that the Commission incorrectly assumes that because a facility operates at 100 kV or above in one part of the country that all facilities operated at similar voltages across the country should be treated as part of the Bulk-Power System. It objects to the Commission's reliance on events on facilities in other regions as rationale for determining that similar facilities in the NPCC region are part of the bulk electric system. According to the NYPSC, "that logic does not hold true, since there are various facilities operated at the same voltages across the country that perform different functions and interact to different degrees with the bulk system, depending on the regional differences."[38] The NYPSC reiterates that it presented evidence in its earlier comments that certain 138 kV facilities in New York City do not serve a bulk electric system function due to the high concentration of load served by those lines. The NYPSC contends that the Final Rule wrongfully dismissed this evidence by indicating that it does "not believe that *most* of these facilities are local distribution."[39] The NYPSC argues that it is invalid to conclude that all facilities rated 100 kV or above support the bulk electric system based on a belief that "most" of these facilities are not involved in local distribution.

Commission Determination

35. As noted previously, contrary to the commenters' assertions, the Commission did not direct or mandate that the bulk electric system definition include a bright-line 100 kV threshold. Instead, the Commission directed NERC to address the inconsistency, lack of oversight and exclusion of facilities that are required for the reliable operation of the interconnected transmission network, outlined by the Commission in Order No. 743 using the technical expertise available to NERC. The Commission suggested that one means to address its concerns would be to, among other things, maintain the 100 kV threshold and radial exclusion contained in the current definition, but left it to NERC's discretion and technical expertise to develop a revised definition. The Commission also supported its suggested solution.[40]

36. Nonetheless, we will reiterate and expand on that discussion here. The Commission's suggested solution of a 100 kV threshold paired with an exemption process, in essence, merely clarifies the current NERC definition, which classifies facilities operating at 100 kV or above as part of the bulk electric system.

37. As discussed in Order No. 743, the NPCC material impact assessment has resulted in inconsistent classification of some facilities along and within Regional Entity borders.[41] Further, Order No. 743 pointed out the failure of the NPCC test to classify facilities associated with nuclear generation as part of the bulk electric system and thus subject to NERC Reliability Standards.[42] The suggested 100 kV threshold would maintain the current assumption, under NERC's current definition, that non-radial 100 kV transmission facilities (not local distribution) are part of the bulk electric system unless exempted through the process NERC develops.

38. The Commission disagrees with the characterization that its suggested approach will only achieve superficial consistency—our suggested approach will require that facilities needed for the reliable operation of interconnected electrical network comply with the NERC Reliability Standards. Regardless of whether NERC adopts our suggested solution in whole or in part, or develops another approach, the bulk electric system definition and related processes that NERC ultimately produces, and the Commission approves, will significantly reduce or eliminate reliability problems arising from incomplete Reliability Standard coverage resulting from ineffective material impact assessments and inconsistent classification of facilities. The Final Rule eliminates these problems by directing the ERO to revise the definition of bulk electric system in a way that addresses the concerns outlined in the Final Rule.

39. The NYPSC argues that the Commission did not provide any evidence supporting a 100 kV threshold since all three examples in Order No. 743 involved facilities 115 kV or higher.

[34] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 331.

[35] Order No. 743, 133 FERC ¶ 61,150 at P 141.

[36] *Id.*

[37] NYPSC at 19.

[38] *Id.* at 14.

[39] *Id.* at 15, *quoting* Order No. 743, 133 FERC ¶ 61,150 at P 39 (emphasis added).

[40] *See, e.g.,* Order No. 743, 133 FERC ¶ 61,150 at P 72–73, 85.

[41] Order No. 743, 133 FERC ¶ 61,150, P 80.

[42] *Id.* P 84.

However, as indicated in Order No. 743, the current NERC bulk electric system definition contains a general 100 kV threshold. The Commission's suggested solution simply would eliminate regional discretion that is not subject to review by the ERO or the Commission in the application of the current threshold. Additionally, the NYPSC's argument presents a distinction without a difference, since nominal voltage levels are established in industry for use in power systems but no voltage classification exists at 100 kV.[43] Therefore, a 100 kV threshold will effectively capture the same facilities as a 115 kV threshold.

40. The Commission also disagrees with the NYPSC's characterization of the suggested 100 kV threshold as treating all facilities operated at similar voltages across the country as part of the bulk electric system. As we have explained, the Commission views the suggested threshold as a first step or proxy in determining which facilities are included and which are excluded or exempted from the bulk electric system. The Commission provided considerable support in the Final Rule for its belief that facilities operated at or above 100 kV are sufficiently similar throughout the continental United States to be able to use a 100 kV threshold as an initial line of demarcation, which the ERO would further refine using exclusions (such as for radial facilities serving only load with one transmission source) and exemptions.[44] Similarly, we are not persuaded by the NYPSC's contention that Order No. 743's reliance on events in several regions as support for taking action on a nationwide basis was misplaced. The facilities in the several regions are sufficiently similar to allow the Commission to draw technical justification for its actions from these events. The same configurations cited in the examples and the areas described in Order No. 743 can be found throughout the country.[45] Facilities operated at 100–200 kV, in parallel with extra high voltage facilities, connect areas with generation to distant hubs and load centers.[46] As discussed in Order No. 743, failure of 100–200 kV facilities has caused cascading outages that would have been minimized or prevented if entities were in compliance with the NERC Reliability Standards.[47] For the reasons discussed above, the Commission denies the requests for rehearing.

2. Impact-Based Methodology

41. The NYPSC requests rehearing on the Commission's rejection of an impact-based test for identifying bulk electric system elements and asks that the Commission reconsider an impact-based test as a viable approach. The NYPSC asserts that "NERC and the NPCC have both determined that the NPCC's impact-based definition, coupled with its regionally tailored reliability criteria, effectively and efficiently ensures reliability."[48] It contends that, because an impact-based test identifies "facilities and control system necessary for operating an interconnected electric energy transmission network," that test is consistent with section 215 of the FPA and obviates the Commission's concern that a discrepancy in definitions could result in reliability gaps.[49] The NYPSC argues that the Commission dismissed the impact approach based on a single event and the stated need for a consistent and comprehensive test. In response, the NYPSC argues that Order No. 743 does not identify how inconsistencies have impacted or may impact the reliable operation of the bulk electric system. Finally, the NYPSC asserts that the Commission's concerns may be capable of being addressed through modifications to the existing impact tests and the Commission should consider the validity of such an approach.

42. Public Power Council also expresses concern that the Commission's discussion about material impact analysis leaves no room for a meaningful test to distinguish between facilities that are necessary for the operation of the bulk electric system and those that are not. Public Power Council criticizes the Commission's rationale, contending that if a material impact assessment indicates that the Bulk-Power System can function properly even if a fault or operational failure occurs on a particular facility, it is not clear why the Commission can claim that that facility is nonetheless "necessary" for bulk electric system operation.

43. In a related vein, NRECA seeks clarification, or in the alternative rehearing, that the Commission's determination regarding "material impact" does not intend for NERC to change the NERC Rules of Procedure (other than to establish a process for granting exemptions) or the NERC Statement of Compliance Registry Criteria. While NRECA acknowledges that the Final Rule does not discuss such changes to the NERC rules or Registry Criteria, NRECA explains that it raises the concern because it is unclear whether Order No. 743 only rejects the NPCC impact-based methodology or every functional impact methodology. NRECA points to various provisions of the NERC rules and Registry Criteria indicating that NERC's registry approach is based on identifying owner, operators and users of the Bulk-Power System that have a "material impact" on the Bulk-Power System.[50] Accordingly, NRECA seeks assurance that the Final Rule is not intended to "undermine the core concepts" of the NERC Rules and Registry Criteria.

Commission Determination

44. Order No. 743 did not reject all material impact assessments but, instead, took issue with particular tests and outlined general problems with the material impact tests used to determine the extent of the bulk electric system that we have seen to date. The NYPSC incorrectly states that the Commission rejected NPCC's material impact assessment based on one event. Rather, as discussed extensively in the Final Rule and elsewhere herein, the Commission rejected NPCC's material impact assessment due to its subjective language and failure to identify facilities necessary to reliably operate the interconnected transmission system.[51] These flaws include use of the amorphous term "local area," which was not consistently applied throughout the NPCC region. The NYPSC does not clarify application of this term in its request for rehearing, and instead merely states that the local area is defined by "the Council members."[52] As Order No. 743 notes, the subjectivity of the "local area" definition, which ultimately determines whether or not a facility is classified as part of the bulk

[43] *See, e.g.,* American National Standards Institute, Incorporated (ANSI) Standard C84.1, *Electrical Power Systems and Equipment-Voltage Ratings (60Hz).*

[44] *See, e.g.,* Order No. 743, 133 FERC ¶ 61,150 at P 73, 139–140.

[45] The Commission reviewed transmission maps available in annual Form 715 submissions (Form 715 submissions). (Form 715 is the "Annual Transmission Planning and Evaluation Report," in which operators of integrated transmission at or above 100 kV submit to the Commission base case power flow and transmission system maps and diagrams. Submissions are considered Critical Energy Infrastructure Information (CEII) and are subject to the Commission's CEII rules.)

[46] *Id.*

[47] Order No. 743, 133 FERC ¶ 61,150, at P 87.

[48] NYPSC at 28.

[49] NYPSC at 28, *quoting* 16 U.S.C. 824o(a)(1)(A).

[50] *See* NRECA at 14–15, quoting NERC Rules of Procedure, section 501; Registry Criteria at 1.

[51] Order No. 743, 133 FERC ¶ 61,150 at P 76–78.

[52] NYPSC at 28.

electric system, has led to varying results throughout the NPCC region.[53]

45. The Commission does not agree that Order No. 743 did not address how inconsistencies in defining the facilities that are included in the bulk electric system may impact the operation of the interconnected transmission network. The Final Rule detailed several instances where the NERC Reliability Standards are less effective when they are not applied to all necessary facilities.[54]

46. Public Power Council contends that it is not clear why the Commission can claim that a particular facility is nonetheless "necessary" for bulk electric system operation if a material impact assessment proves that the Bulk-Power System can function properly even if a fault or operational failure occurs on that facility. As we noted in Order No. 743, by this metric the facilities that caused the 2003 Blackout would not be viewed as critical since none of the individual facilities caused the outage.[55] In defining jurisdictional facilities, section 215(a)(1) focuses on whether facilities are necessary to operate the interconnected transmission system, not solely on the consequences of unreliable operation of those facilities.[56]

47. The Commission clarifies that it was not our intent to disrupt the NERC Rules of Procedure or the Statement of Compliance Registry Criteria. Nor did the Commission intend to rule out using any form of a material impact test in the reliability context that can be shown to identify facilities needed for reliable operation. However, as Order No. 743 explained, the Commission has serious concerns about NPCC's Document A–10 methodology. The Commission stated that, as a threshold matter, the material impact tests proffered by commenters did not measure whether specific system elements were necessary for operating the system, but, rather, measure the impact of losing the element.[57] The Commission's extensive discussion of the NPCC test further noted that the NPCC methodology is unduly subjective, and results in an inconsistent process that excludes facilities necessary for operating the bulk electric system from the definition. Therefore, the Commission indicated, should NERC choose to define the bulk electric system using a method other than one employing the 100 kV bright line threshold the Commission suggested, such an alternative method must be consistent, repeatable and verifiable with supporting technical analysis.[58]

3. Western Interconnection/Regional Variation

48. In Order No. 743, the Commission rejected arguments that 100–199 kV facilities in the Western Interconnection should be treated differently than facilities in the Eastern Interconnection.[59] The Commission stated that commenters had not provided an adequate explanation, supported by data and analysis, why there is a physical difference that justifies different treatment of these facilities in the West.

49. Snohomish and Public Power Council contend that, because 115 kV facilities commonly are used in the West for distribution, the Commission's "inflexible" 100 kV threshold is "unworkable" in the West. Snohomish and Public Power Council claim that the Western Interconnection is materially different from the Eastern Interconnection because the long distances between load centers, and the vast areas commonly covered by distribution systems, result in a transmission system that is largely operated at voltages of 230 kV or above, and distribution systems that are commonly operated at voltages of 115 kV. They contend that this physical difference is documented in a study performed by WECC's Bulk Electric System Definition Task Force.[60] Snohomish contends that power flow base cases examined by the Bulk Electric System Definition Task Force support their assertion that facilities rated between 100 kV and 200 kV have a small impact on transmission in the West.

50. Further, Snohomish contends that Order No. 743, at most, demonstrates a problem in the NPCC region and does not provide justification for action in the West. Snohomish asserts that the Final Rule fails to identify a single reliability event in the Western Interconnection arising from the bulk electric system definition as currently applied. Snohomish argues that the Commission cannot use isolated and localized problems to justify nationwide action.[61] According to Snohomish, the three disturbances discussed in the Final Rule cannot justify nationwide action or demonstrate that all facilities operated in the 100–200 kV range are part of the interconnected transmission grid.

51. Snohomish also contends that the Commission implicitly accepted the evidence that most 115 kV facilities in the West operate as distribution by failing to assert that the evidence is flawed, but, instead, responding in the Final Rule that some facilities operating in the 100–200 kV range in the West are "operationally significant and needed for reliable operation as identified by certain WECC documents."[62] According to Snohomish, this demonstrates the irrationality of Order No. 743's approach because it focuses on the operating voltage of electric facilities to the exclusion of more germane factors such as how those facilities are connected and interact with the grid. Snohomish claims that the threshold approach is inconsistent with previous statements from the Commission that acknowledge that the function of facilities and how they are interconnected determines their significance. Public Power Council explains that, currently, most Public Power Council members that operate 115 kV distribution facilities are not classified as transmission owners or operators. Thus, according to Snohomish and Public Power Council, by taking a superficial view of the matter, Order No. 743's 100 kV threshold would sweep in a large number of facilities, including hundreds or perhaps thousands of miles of local distribution facilities, in the West.

52. Snohomish additionally raises a concern that the Final Rule could be read in a manner that would require an end to the work of the WECC Bulk Electric System Definition Task Force. Snohomish states that the Bulk Electric System Definition Task Force, which was created in 2008 partly in response to Order No. 693, has been working on developing a bulk electric system definition that is appropriate to the unique facts of the Western Interconnection.[63] Snohomish argues that a Commission directive "to 'eliminate the regional discretion in the ERO's current definition' of BES" would mean "that the work of the [Bulk Electric System Definition Task Force] must be terminated because it would result in a regional variation to the BES definition that FERC has forbidden."[64]

[53] Order No. 743, 133 FERC ¶ 61,150 at P 80.

[54] *See, e.g., Id.* P 80, 83, 86, 90.

[55] *Id.* P 38.

[56] 16 U.S.C. 824o(a)(i).

[57] Order No. 743, 133 FERC ¶ 61,150 at P 76.

[58] *Id.* P 74, 85.

[59] *Id.* P 139–140.

[60] *See* Public Power Council at 6, Snohomish at 9 *quoting* WECC Bulk Electric System Definition Task Force, Initial Proposal, attached as Exh. A to Snohomish's NOPR comments.

[61] Snohomish at 31–32, *citing Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1019 (DC Cir. 1985).

[62] Snohomish at 11–12, *quoting* Order No. 743, 133 FERC ¶ 61,150 at P 139.

[63] *See* Snohomish at 35.

[64] Snohomish at 40–41, *quoting* Order No. 743, 133 FERC ¶ 61,150 at P 30.

This result, according to Snohomish, would violate the FPA because "Section 215(d)(2) requires FERC to accord 'due weight' to the 'technical expertise' of both NERC and WECC, and Section 215(d)(3) requires NERC to 'rebuttably presume' that reliability standards developed and approved by WECC are consistent with the FPA." [65] Therefore, Snohomish requests clarification, or in the alternative rehearing, that the Commission's "findings concerning the material impact assessment methodology used in NPCC apply only to the NPCC" and do not apply to the Bulk Electric System Definition Task Force efforts currently under way.[66] Snohomish further seeks clarification, or in the alternative rehearing, that the bulk electric system definition currently being developed for application in WECC "may incorporate any voltage threshold or other method of assessing the impact of lower-voltage facilities," that the WECC bulk electric system definition "*must* exclude facilities used in the local distribution of electric energy," and that the definition should distinguish between facilities that are or are not necessary for operating an interconnected energy transmission network.[67] Finally, Snohomish argues that the Commission should clarify that the Final Rule is not intended to stop NERC's review of the findings of the Ad Hoc Committee for Generator Requirements and the Transmission Interface (GOTO Task Force) because such an action would be arbitrary and capricious.[68]

Commission Determination

53. The Commission denies rehearing on these issues. As stated elsewhere, Order No. 743 did not mandate a 100 kV threshold. Rather, the Commission directed NERC to develop a revised definition that addresses our concerns with the current definition, including inconsistency, lack of oversight and exclusion of facilities that are required for the reliable operation of the interconnected transmission network. We suggested that one means to address our concerns would be to maintain the 100 kV threshold contained in the current definition, while eliminating the discretion that allows Regional Entities to interpret and apply the definition without ERO or Commission oversight.

54. Commenters contend that the majority of 115 kV facilities in the West are distribution facilities and therefore not significant to the transmission of power. First, as we have stated herein, to the extent any facility is a local distribution facility, it is exempted from the requirements of section 215.[69] However, the Commission observes that numerous 115 kV and 138 kV transmission lines in the Western Interconnection often are the only pathway available between various load centers and networked points.[70] Other network points are electrically and physically remote from each other and have the potential for parallel flows between two transmission paths, some at different voltage levels and others at the same voltage. Analyzing how the flows split during normal, outage and emergency conditions, as well as implications to system constraint, could lead to a conclusion that such facilities are improperly labeled as local distribution.

55. Snohomish argues that the Commission errs in focusing on voltage rather than the characteristics of the facilities. However, in the first instance, the Commission's suggested approach uses NERC's current definition, which includes a 100 kV threshold, as a baseline for determining which facilities are included in the bulk electric system. As discussed below, we view a voltage threshold as an initial proxy for determining where the line between local distribution and transmission lies. We agree with Snohomish that it is important to consider additional facility characteristics in order to make a final determination regarding which facilities are included in the bulk electric system.

56. The Commission notes that while the events cited in Order No. 743 occurred in the Eastern Interconnection, the underlying concerns are applicable to the nation as a whole. Currently, NERC and the Commission do not have oversight of regional bulk electric system classification decisions. If all facilities necessary for reliable operation are not subject to the Reliability Standards, the effectiveness of the Reliability Standards is undermined.

57. Snohomish's concern that Order No. 743 would put an end to the WECC Bulk Electric System Definition Task Force is unfounded. The Commission clarifies that our intent in requiring the ERO to "eliminate the regional discretion" from the current definition was to prevent the regions from modifying the regional bulk electric system definition without Commission or ERO oversight. As noted elsewhere, WECC may petition for a regional variation, if justified, through the process outlined in Order No. 672.[71]

58. In response to Snohomish's question concerning local distribution, we reiterate that facilities used for local distribution are excluded from the Bulk-Power System definition under section 215, and thus are excluded from the bulk electric system. With respect to changing the 100 kV threshold in the approved definition, the Commission did not direct such a change.

59. Similarly, we reiterate that Order No. 743 does not affect the GOTO Task Force's activities; however, the task force members may submit their comments and report to NERC for its consideration as NERC develops an exemption process.

60. We understand from the Public Power Council's comments that most Public Power Council members owning or operating 115 kV facilities are not classified as transmission owners or operators due to the fact that their facilities are radial from one transmission supply and serving only load. Such facilities currently are excluded from registration and we believe would appropriately be excluded in an acceptable revised bulk electric system definition.

D. Bulk-Power System v. Bulk Electric System

61. APPA and TANC request clarification that the Commission is not now making a determination as to whether the Bulk-Power System is broader than the bulk electric system and is preserving for future proceedings the rights of parties to challenge such a determination. According to APPA, the Final Rule appears to track the statutory definition of Bulk-Power System, *i.e.,* "all facilities necessary to operate the interconnected transmission network," in framing its directive to NERC to revise the definition of bulk electric system. APPA also points to language in Order No. 743 that it believes suggests that the Commission considers that the statutory definition of Bulk-Power System may be broader than the bulk electric system.[72] APPA states that, to preserve its legal rights on the matter, it seeks "limited clarification" that the Commission is not determining that the statutory Bulk-Power System definition extends beyond the bulk electric system

[65] *Id.* at 41, *citing* 16 U.S.C. 824o(d)(2)–(3).

[66] *Id.* at 42.

[67] *Id.* at 43 (emphasis in original).

[68] As described in Order No. 743, NERC has undertaken an initiative (the GOTO task force) to address the special circumstances associated with generators and to determine which Reliability Standards might be inappropriate for such limited facilities. *See* Order No. 743, 133 FERC ¶ 61,150, at n.158.

[69] 16 U.S.C. 824o(a)(1).

[70] Form 715 submissions.

[71] *See* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 291.

[72] APPA at 5, *quoting* Order No. 743133 FERC ¶ 61,150 at P 36, 41, and 100.

definition as NERC is directed to revise it in this proceeding. In the alternative, if the Commission denies clarification, APPA seeks rehearing that "given the Final Rule's directions to NERC to define [bulk electric system] in a manner that tracks, virtually word-for-word, the statutory [Bulk-Power System] definition, the Commission's continued suggestion that the [Bulk-Power System] definition may reach further than the [bulk electric system] would be arbitrary and contrary to the express terms of the statute."[73]

62. Based on similar concerns, NRECA requests clarification, or in the alternative rehearing, that the statutory definition of Bulk-Power System and the definition of bulk electric system are synonymous. NRECA points to provisions of the NERC Rules of Procedure that reference the Bulk-Power System to demonstrate such convergence. NRECA also contends that the language of section 215 and the statute's legislative history, and prior usage of the two terms, supports its position.

Commission Determination

63. The Commission grants APPA and TANC's requests for clarification. We do not see any useful purpose that would be served by defining the term Bulk-Power System in this proceeding, and decline to do so. Accordingly, we dismiss as premature NRECA's request for clarification, or in the alternative, rehearing.

E. Identification of Facilities Used in Local Distribution

64. In Order No. 743, the Commission recognized that the ERO would need to establish whether a particular facility is local distribution or transmission, and directed the ERO to develop a means to make such a determination.[74]

Comments

65. Consumers Energy, Exelon and Portland General request clarification that NERC's evaluation of how to classify facilities should consider prior distribution classifications. Consumers Energy and Portland General seek clarification on the role of the Order No. 888 Seven Factor Test in determining whether facilities are classified as "local distribution facilities" and the impact of a prior Seven Factor Test determination.[75] Consumers seeks clarification whether facilities in excess of 100 kV that have explicitly been found by the Commission to be local distribution under the Seven Factor Test will automatically be excluded from the bulk electric system or will they need to go through the exemption process. Consumers Energy further asks whether, if the owner of such facilities must apply for an exemption, the earlier Seven Factor finding provides a presumption that the facility should be excluded. Exelon insists that a facility can be classified as either local distribution or bulk transmission—but not both.

66. EEI and Portland General request clarification that the term "used in local distribution" does not have different meanings under sections 201(b)[76] and 215 of the FPA and that the Final Rule does not affect other determinations of what facilities are considered "used in local distribution" and thus outside of the Commission's jurisdiction. EEI argues that since Congress used the same terminology in defining the Commission's jurisdiction in both sections 201 and 215, it must have intended the words to have the same meaning. EEI seeks clarification that previous or future regulatory decisions regarding local distribution facilities can serve as an exemption criterion, and states that such clarification will better align jurisdictional determinations under the FPA. Portland General argues that the Commission does not have the flexibility to interpret "facilities used in local distribution" to mean two different things in two different parts of the FPA. Specifically, Portland General argues that the Commission "must acknowledge and give effect to established FPA Section 201(b) precedent regarding the identification of 'local distribution' facilities, and must recognize that Congress intended the same 'local distribution' facilities to be exempt from Commission jurisdiction under Sections 201(b) and 215(a) of the FPA."[77]

Commission Determination

67. Although local distribution facilities are excluded from the definition, it still is necessary to determine which facilities are local distribution, and which are transmission. Whether facilities are used in local distribution will in certain instances raise a question of fact, which the Commission has jurisdiction to determine.[78] The Commission envisioned that the process of identifying which facilities are local distribution and which are transmission likely would require more than one step. Under the methodology the Commission proffered, the 100 kV bright-line threshold would serve as the initial proxy for determining which facilities are local distribution, and which are transmission. The Final Rule provides ample support for the reasonableness of a 100 kV threshold, not the least of which is that the ERO's definition of bulk electric system currently utilizes a general 100 kV threshold.[79] The Commission recognized, however, that it would be necessary to identify any local distribution that is improperly included, and conversely to identify any transmission that is improperly excluded, by the proxy.

68. The Commission clarifies that the statement in Order No. 743, "determining where the line between 'transmission' and 'local distribution' lies * * * should be part of the exemption process the ERO develops"[80] was intended to grant discretion to the ERO, as the entity with technical expertise, to develop criteria to determine how to differentiate between local distribution and transmission facilities in an objective, consistent, and transparent manner. This mechanism will allow the ERO to maintain an inventory of the transmission facilities subject to the mandatory Reliability Standards, and to exclude local distribution facilities from the bulk electric system definition by applying the criteria. Once NERC develops and submits its proposal to the Commission, the Commission will, as part of its evaluation of the proposal, determine whether the process developed adequately differentiates between local distribution and transmission.

69. We agree with Consumers Energy, Portland General and others that the Seven Factor Test could be relevant and possibly is a logical starting point for determining which facilities are local distribution for reliability purposes, while also allowing NERC flexibility in

[73] APPA at 7–8.

[74] *Id.* P 37.

[75] *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248, *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[76] 16 U.S.C. 824.

[77] Portland General at 10.

[78] *See, e.g., California Pacific Electric Company, LLC,* 133 FERC ¶ 61,018 at n.59 (2010) ("The Supreme Court has determined that whether facilities are used in local distribution is a question of fact to be decided by the Commission."), *citing FPC* v. *Southern California Edison Co.,* 376 U.S. 205, 210 n.6 (1964).

[79] *See, e.g.,* Order No. 743, 133 FERC ¶ 61,150 at P 73, 85.

[80] Order No. 743, 133 FERC ¶ 61,150 at P 37.

applying the test or developing an alternative approach as it deems necessary.

70. With respect to Consumers Energy's request for clarification regarding prior Seven Factor Test determinations qualifying for automatic exclusion, the Commission reiterates that we have granted NERC discretion to develop a means to differentiate between local distribution and transmission facilities, which NERC will submit to the Commission for review and approval. Consequently, we leave to NERC in the first instance questions about if and how the Seven Factor Test should be considered in differentiating between local distribution and transmission facilities.

71. Our purpose in moving away from the proposal in the NOPR was to provide NERC with the greatest amount of flexibility to utilize its technical expertise and processes in developing an appropriate exemption process to complement a revised definition of "bulk electric system." Considerations regarding the Seven Factor Test and its usefulness in a NERC-designed exemption process are initially for NERC to decide in response to our directive in Order No. 743. As we said in Order No. 743, "allowing the ERO to develop an appropriate exemption process should provide interested stakeholders an opportunity to participate in the development of the process."[81] Consumers Energy, Portland General and others can raise any concerns with respect to use of the Seven Factor Test or any other concern during the development of the exemption process. Under the exemption process the Commission ultimately approves, once a facility is classified as local distribution, the facility will be excluded from the bulk electric system unless changes to the system warrant a review of the determination.

72. We decline to provide the clarification EEI and Portland General request regarding the use of the term "used in local distribution" in FPA sections 201(b) and 215, as we find the request premature. Order No. 743 tasked NERC, as the entity with technical expertise, with developing a process for differentiating between local distribution and transmission facilities to apply in the reliability context. Once NERC develops and submits a proposed methodology, we will evaluate whether the proposal results in any conflicts with the statutory language.

[81] Order No. 743, 133 FERC ¶ 61,150 at P 112.

F. Exemption Process

73. Order No. 743 directed NERC to develop a process for exempting facilities operated at or above 100 kV that are not necessary for operating the transmission grid. The Final Rule declined to dictate the substance of the exemption process, leaving this task to the ERO. This would provide interested stakeholders an opportunity to participate in developing the process. The Final Rule did identify several matters or concerns to be addressed in an acceptable exemption process. The Commission asked the ERO to develop an exemption process that includes clear, objective, transparent, and uniformly applicable criteria for exemption of facilities that are not necessary for operating the grid and any related changes to its Rules of Procedures that may be required to implement the exemption process. Numerous petitioners seek rehearing and clarification regarding the exemption process discussed in the Final Rule.[82]

1. Exclusion of Facilities Used in Local Distribution

74. Western Petitioners and Portland General seek rehearing that the exemption process developed by the ERO should not apply to facilities used in local distribution. Western Petitioners and Portland General state that facilities used in local distribution are not subject to section 215. Thus, they argue that the ERO lacks authority to subject local distribution facilities to an exemption process. According to Western Petitioners, subjecting such facilities to an exemption process developed by the ERO, and allowing the ERO to determine "jurisdictional exemptions" for facilities not subject to section 215 would "eviscerate state jurisdiction over numerous local facilities, in direct contravention of Congress' intent."[83] For its part, Portland General argues that, by directing NERC to review facilities over 100 kV currently designated as local distribution under the Seven Factor Test and "by pushing the ERO to recognize a bright-line presumption threshold that was expressly rejected in Order No. 888, the Commission is clearly departing from its existing precedent, under which these same facilities have been determined to be 'local distribution' facilities exempt from regulation under Section 215."[84]

[82] As discussed further below, the Commission uses the term "exclusion" herein when discussing facilities expressly excluded by the statute (*i.e.,* local distribution) and the term "exemption" when referring to the exemption process NERC will develop for use with facilities other than local distribution that may be exempted from compliance with the mandatory Reliability Standards for other reasons.

[83] Western Petitioners at 12, *quoting Detroit Edison Co.* v. *FERC,* 334 F.3d at 54.

Commission Determination

75. As the Commission explained above, we agree that local distribution facilities are not subject to FPA section 215. However, we disagree with Western Petitioners and Portland General that it is outside our jurisdiction to determine which facilities are local distribution and therefore excluded from the bulk electric system. We have in the first instance the authority to determine the scope of our jurisdiction.[85]

76. The Commission notes some confusion regarding "exclusions" versus "exemptions." We understand that a facility that is excluded would not have to go through any process at NERC to determine applicability. On the other hand, where an entity applies to NERC to seek to exempt its facility from the bulk electric system, NERC would follow an exemption process. With that understanding, we clarify that, as discussed herein, we envision that the process for determining which facilities will be included under the bulk electric system will involve several steps. NERC will develop criteria for determining whether a facility that falls under the definition of bulk electric system may qualify for exclusion. If, for example, the application of the criteria clearly indicates that a facility is local distribution, the facility is excluded, and no process before the ERO is required. If application of the NERC criteria does not lead to a definitive result, the entity could apply for an exemption, invoking a factual inquiry before the ERO to determine the proper categorization of facilities.

2. Maintaining a List of Excluded Facilities

77. Similarly, Western Petitioners challenge the suggestion in the Final Rule that the ERO maintain a list of excluded facilities, including local

[84] Portland General at 14.

[85] *See, e.g., Nine Mile Point Nuclear Station LLC* v. *Niagara Mohawk Power Corp.,* 110 FERC ¶ 61,033, at P 30 & n.31 (2005), *aff'd,* 452 F.3d 822 (D.C. Cir. 2006); *accord New York* v. *FERC,* 535 U.S. 1, 22–23 (2002) (holding that the Commission was within its authority to establish a seven-factor test to determine which facilities are local distribution facilities that fall outside of the Commission's jurisdiction pursuant to FPA section 201). *Cf. Western Massachusetts Electric Co.,* 61 FERC ¶ 61,182, at 61,661 (1992), *aff'd,* 165 F.3d 922, 926 (D.C. Cir. 1999) (concluding the Commission may examine contracts relating to transactions which may be subject to its jurisdiction prior to making its determination as to jurisdiction).

distribution facilities, arguing that the establishment of a rule to maintain such a list is beyond NERC's statutory authority. They argue that nothing in FPA section 215 vests the ERO with oversight of facilities used in distribution, even for the purpose of maintaining a list of exempt facilities.

Commission Determination

78. The Commission agrees with Western Petitioners that section 215 does not grant the ERO oversight of facilities used in local distribution. However, as the Commission has explained, we have jurisdiction to determine which facilities are local distribution, and which are transmission. In order to exercise such oversight, including the appropriate application of the ERO's exemption determinations, it is important to have an inventory of facilities.[86]

79. Once the ERO develops the inventory of facilities by applying the process the Commission ultimately approves, the Commission has authority, in its ERO oversight role, to review the determinations to ensure consistent application of the process and the accuracy of the resulting inventory. Such a review necessarily includes reviewing not only the inventory of facilities ultimately classified as transmission, but also those excluded as local distribution, particularly in instances where the decision was a close call. In performing such a review, the Commission is not inappropriately overseeing local distribution facilities but, rather, is reviewing the ERO's application of the process for drawing the line between local distribution and transmission, which is within our authority under section 215 of the FPA.

3. Exemption v. Exclusion of "Radials To Load" Facilities

80. In Order No. 743, the Commission reiterated that we do not seek to modify the second part of the current NERC bulk electric system definition, which states that "[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition."[87] The Commission also suggested that the ERO could also track exemptions for radial facilities.[88]

Comments

81. APPA, TANC, NRECA and TAPS request clarification that radial transmission facilities serving only load, *i.e.,* radials to load, with one transmission source may be excluded from the bulk electric system definition and entities with such facilities need not go through an exemption process. TAPS and APPA state that exclusion of radials to load, rather than inclusion subject to exemption, is consistent with section 215 of the FPA. TAPS argues that the Final Rule makes no attempt to demonstrate that radials to load are among the "facilities necessary to operate an interconnected network" that the Commission directed NERC to include in the bulk electric system definition. APPA explains that a 20 MW distribution utility that owns a 115 kV radial to load is likely not to have any contact with NERC since the utility's load is radial and below the threshold for NERC registration. APPA expresses concern that, pursuant to the Final Rule, such a utility could now have to incur the time and resources necessary to demonstrate that it falls within an exemption. TAPS and APPA contend that subjecting currently-excluded "radial to load" to an exemption process would create an unnecessary burden on industry, particularly small entities, as well as NERC and the Regional Entities. Likewise, NRECA seeks clarification that the Commission did not intend that the owner of every currently-excluded facility operated at above 100 kV re-apply for an exclusion or exemption and that the ERO conduct a *de novo* review of such facilities. NRECA contends that such an approach would unreasonably burden the resources of utilities, create a huge backlog that slows the exemption process, and denies the ERO the ability to exercise its judgment in the matter.

82. For the same reasons, TAPS also seeks clarification that the Commission, in suggesting that the ERO establish a mechanism for reporting and tracking exempted radial facilities, did not intend to include excluded radial to load. TAPS contends that the Final Rule does not support the need for such reporting and tracking, and that the burden to industry and the ERO is not justified. TAPS states that it agrees that radial facilities outside the current bulk electric system definition, *i.e.,* those that are not "radial transmission facilities serving only load with one transmission source," that still warrant exclusion, would be appropriate for an exemption process and the suggested tracking.

83. Consumers Energy, noting that the current definition of bulk electric system excludes "radial transmission facilities serving only load with one transmission source," requests clarification whether the exclusion applies to a radial line with only one transmission source that is designed to serve load, but also serves "incidental small generation." According to Consumers, such situations are becoming more common with the interconnection of small distributed renewable generation. Consumers Energy asks how much incidental generation a line could serve and continue to meet the bulk electric system radial line exclusion.

Commission Determination

84. In Order No. 743, the Commission directed the ERO to develop an exemption process and made clear that "we will not dictate the substance or content of the exemption process * * *."[89] Thus, while the Commission stated that the ERO should develop an exemption process that includes "clear, objective, transparent, and uniformly applicable criteria" for determining exemptions, the Commission otherwise left it to the ERO's discretion to develop an appropriate exemption process, which the Commission will review. Any exemption of radial facilities is not based on a statutory requirement, unlike exclusion of local distribution. However, the Commission believes that certain categories of radial facilities may lend themselves to an "exclusion" process as described above (*i.e.,* once identified as belonging in a certain radial category, the facilities could be excluded without further review). For example, should the revised bulk electric system definition maintain the exclusion of radial facilities serving only load from one transmission source, these types of facilities easily could be excluded without further analysis.

85. We believe that, in general, the decision whether, and in what circumstances, to apply an exemption versus exclusion process for radial to load facilities is largely a matter of balancing between, on the one hand, administrative ease, *e.g.,* NERC having to review thousands of exemptions for facilities outside the NPCC region that previously were excluded as radial and, on the other hand, assuring that facilities necessary for operation of an interconnected grid are not inadvertently excluded. That being said, we believe that the ERO should balance these matters when developing an appropriate process. Likewise, with regard to NRECA's request to clarify that the Commission does not seek to require NERC or the regions to conduct a *de novo* review of all exemptions granted to date, we did not require a *de novo* review and leave an appropriate review process to the ERO.

[86] Order No. 743, 133 FERC ¶ 61,150 at P 117.

[87] Order No. 743, 133 FERC ¶ 61,150, at P 55.

[88] *Id.* P 119.

[89] *Id.* P 114.

86. The Commission clarifies that Order No. 743 granted NERC discretion to make a determination regarding whether to exclude or exempt radial facilities. One consideration in this regard is whether an exclusion process will avoid NERC having to review thousands of exemptions for facilities outside the NPCC region that previously were excluded as radial.

87. Additionally, as the Commission noted, commenters have many ideas about what types of facilities should be considered "radial." [90] NERC can consider whether these facilities should be candidates for exemption.[91] Any expansion of the definition of radial facilities beyond the approved definition must be supported with a technical analysis.

88. With respect to Consumers' request for clarification regarding how much incidental generation a line could serve and continue to meet the bulk electric system radial line exclusion, this is an issue that should be raised with NERC as it develops criteria for determining what is considered radial.

4. Development of Exemption Process Through NERC Reliability Standards Development Process

89. While agreeing with the Commission's directive that NERC develop revisions to the bulk electric system definition through NERC's Reliability Standards Development Process, NRECA requests clarification, or in the alternative rehearing, that NERC also must develop criteria for exemptions through the Standards Development Process. NRECA maintains that exemptions from the bulk electric system are as much a part of the Reliability Standards as the definition itself, as both determine the Standards' scope and applicability. According to NRECA, the purely procedural aspects of an exemption process can be developed by NERC and included in the Rules of Procedure. However, NRECA contends that the development of exemption criteria is a "core" technical task that requires use of the Reliability Standards Development Process.

Commission Determination

90. Given that the decision as to how to proceed in response to Order No. 743 rests first with NERC, we decline to provide the clarification requested by NRECA at this time. We explained in Order No. 743 that the NERC Glossary (which includes the definition of bulk electric system) is part of the Reliability Standards, and thus changes to the Glossary should be developed through the Reliability Standards Development Process.[92] However, although the exemption process certainly will play a role in determining which facilities are included in the bulk electric system, the process is not part of the definition, nor part of any Reliability Standard. Accordingly, the Commission leaves the decision as to how to proceed in response to its directive to NERC in the first instance. The Commission expects, as indicated in Order No. 743, that NERC will provide ample opportunity for stakeholder input into the exemption process regardless of whether NERC determines to proceed using the Reliability Standard Development Process or by amending the Rules of Procedure. Accordingly, the Commission denies NRECA's rehearing request on this matter.

5. Compliance While an Exemption Application Is Pending

91. NRECA seeks clarification that currently unregistered entities that may be required to seek an exemption for facilities under the revised bulk electric system definition will not be required to register and thereafter comply with Reliability Standards until a final decision is made to deny the application for exemption. NRECA, noting that the Commission indicated that it did not expect the Final Rule to result in many additional facilities outside of the NPCC region becoming subject to Reliability Standards,[93] states that this observation is particularly true for currently-exempt facilities in the other seven regions. NRECA contends that it is unreasonable to require an entity to expend the financial and staff resources needed to develop a compliance program when the ERO may ultimately determine that the facilities are exempt.

92. In a related vein, NRECA requests clarification that the ERO should have the flexibility to propose a transition process that it deems feasible and appropriate, not necessarily a hard deadline of 18 months after Commission approval.

Commission Determination

93. As the Commission indicated in the Final Rule, the transition period is intended to allow a reasonable period of time for the affected entities to achieve compliance with respect to facilities that are subject to the mandatory Reliability Standards for the first time.[94] We agree with NRECA that affected entities should not be required to take costly steps to comply with the Reliability Standards prior to the ERO's initial determination on an exemption request. However, as indicated in Order No. 743, "we expect that the transition periods will be long enough for exemption requests to be processed and to allow entities to bring newly-included facilities into compliance prior to the mandatory enforcement date." [95] We reiterate that we do not anticipate a large number of exemption requests arising outside NPCC.[96] Thus, our expectation remains that NERC should be able to process any exemption requests in a timely manner, allowing any entity denied an exemption to come into compliance with the relevant Reliability Standards within the transition period.

94. With respect to the length of the transition period, as discussed in the Final Rule, we based our determination to establish an 18-month transition period on ReliabilityFirst's prior experience in adopting a revised bulk electric system definition in that region, and continue to believe it is a reasonable transition period.[97] Additionally, we noted that the ERO may request a longer transition period based on a specific justification. This provides sufficient flexibility should the ERO determine that the 18-month transition period is insufficient.

6. Step-Down Transformers

95. The Final Rule, in response to a ReliabilityFirst request for clarification that facilities that operate at 100 kV or above should be considered bulk electric system facilities, even if, for example, one transformer winding operates below 100 kV, stated that "we agree with [ReliabilityFirst's] developed delineation point with regard to 'step-down' transformers, but note that these kinds of refinements can and should be addressed as part of the NERC exemption process." [98]

96. EEI, Consumers and Wisconsin Electric request clarification that this statement concerning the treatment of step-down transformers was offered to provide guidance and not intended to prejudge the exemption criteria to be developed by the ERO. EEI claims that many state commissions treat step-down transformers with a low-side winding below 100 kV as under state rate jurisdiction. Wisconsin Electric contends that, while the suggested

[90] Order No. 743, 133 FERC ¶ 61,150 at P 55.

[91] *Id.*

[92] *Id.* P 29–30.

[93] NRECA at 20–21, *citing* Order No. 743, 133 FERC ¶ 61,150 at P 131, 169.

[94] Order No. 743, 133 FERC ¶ 61,150 at P 131.

[95] *Id.* P 132.

[96] *Id.* P 131.

[97] *Id.*

[98] *Id.* P 148–149.

approach would simplify auditing, it would impose burdens on registered entities without a commensurate enhancement to reliability.

97. Consumers Energy suggests that the characteristics of the "low side" of a facility be considered when determining whether an entire facility is considered part of the bulk electric system. Consumers states that it has facilities with a 138 kV high side voltage and a low side ranging from 46 kV to 2.5 kV, and contends that the low side provides service only for local distribution.

Commission Determination

98. Order No. 743 directed the ERO to develop an exemption process, and specifically declined to "dictate the substance or content of the exemption process." [99] However, we provided guidance, stating that the process should include clear, objective, transparent and uniformly applicable criteria for exemption of facilities that are not necessary for operating the interconnected transmission system. Accordingly, the Commission grants EEI's, Consumers Energy's and Wisconsin Electric's requests for clarification that the discussion regarding which facilities should or should not be included in the bulk electric system definition was intended to provide guidance, not to prejudge what should be included in the exemption criteria. Therefore, the Commission declines to provide the specific clarifications requested regarding treatment of various types of step down transformers.

7. Process for Including Sub-100 kV Facilities

99. In the rulemaking, ERCOT commented that facilities operated below 100 kV generally are not considered part of the bulk electric system, but can be included if identified as a critical facility by a Regional Entity. ERCOT suggested that, similar to the development of an exemption process to consider applications for exemption of facilities above 100 kV, the Commission should consider imposing a process for inclusion of critical facilities below 100 kV. In Order No. 743, the Commission responded that it agrees with ERCOT's suggestion and "it would be worthwhile for NERC to consider formalizing the criteria for inclusion of critical facilities operated below 100 kV in developing the exemption process." [100]

100. Western Petitioners state that the Commission should clarify that all local distribution facilities, including those operated at below 100 kV which may be deemed "critical" by a Regional Entity, are expressly excluded under section 215 of the FPA.

101. APPA and TANC request clarification that, in suggesting that NERC formalize the criteria for including critical facilities operated below 100 kV in developing the exemption process, the Commission was not seeking to alter NERC's Statement of Registry Criteria (Registry Criteria) or shift the evidentiary burdens. APPA notes that the current Registry Criteria include a provision that allows the registry of entities that own critical facilities below the 100 kV threshold.[101] APPA expresses concern that a parallel process developed in conjunction with the exemption process might be construed as a departure from the Registry Criteria, which places the burden on NERC and the Regional Entities to demonstrate the need to include facilities operated at below 100 kV as part of the bulk electric system. APPA supports a process that enhances consistency among Regional Entity determinations and ensures better due process to would-be registered entities with potentially critical facilities operated at below 100 kV facilities, and seeks clarification that this understanding of the Commission's statement is correct.

Commission Determination

102. The Commission clarifies that Order No. 743 did not intend to alter the Registry Criteria, shift the evidentiary burden for registration, or otherwise address matters involving the Registry Criteria. Indeed, the Statement of Compliance Registry Criteria currently provides that the Regional Entities may propose registration of entities that do not meet the registry criteria if the Regional Entity believes and can reasonably demonstrate that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system.[102] However, we note that while the Registry Criteria will not change, it is possible that additional facilities may come under the revised definition and some entities may be required to register for the first time.

103. The Commission agrees with APPA that underlying our suggestion that NERC consider an inclusion process for critical facilities operated below 100 kV was a concern that Regional Entities make such determinations in an appropriate and consistent manner, according to developed criteria, which should better ensure due process.

104. We agree with Western Petitioners that, as stated elsewhere herein, the Commission does not have jurisdiction over facilities that are determined to be local distribution through the process NERC develops and we approve.

G. Requests for Revised Regulatory Flexibility Act Analysis

105. In Order No. 743, the Commission stated that the Final Rule will not have a significant economic impact on a substantial number of small entities since most transmission owners, transmission operators and transmission service providers do not fall within the definition of small entities. Further, the Commission suggested that the ERO create an appropriate exemption process and that this process will further ensure that the Final Rule minimally affects small entities. As we noted in the NOPR, the Commission estimated that approximately four of the 33 transmission owners, transmission operators and transmission services providers identified in the U.S. portion of the NPCC region may fall within the definition of small entities.

Comments

106. APPA and NRECA request that the Commission clarify that it will perform a revised Regulatory Flexibility Act analysis once the exemption process has been developed by NERC and approved by the Commission in order to determine whether the Commission's finding that the Final Rule will not have a significant economic impact on a substantial number of small entities is arbitrary. In particular, APPA and NRECA assert that the Commission erred by certifying that the Final Rule will not have a significant economic impact on a substantial number of small entities, particularly in light of the uncertainties of an as-yet-to-be-developed exemption process to mitigate the impact of the Final Rule on small entities. APPA and NRECA argue that the Commission's reliance on the exemption process to be established by NERC to support its Regulatory Flexibility Act certification is not justified. They assert that the ability of the exemption process to minimize the impact on small entities cannot be assessed until the exemption process is

[99] *Id.* P 114.

[100] *Id.* P 121.

[101] APPA at 11, *citing* Registry Criteria, section II.D.2 (providing for registration of "[a]n entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity").

[102] Statement of Registry Criteria at 10 (Note 1 to Registry Criteria).

developed by NERC and approved by the Commission.

107. TANC requests clarification that the Commission has not yet finalized its Regulatory Flexibility Act analysis and will not do so until NERC has submitted a proposed exemption process.

108. Public Power Council, NYPSC and Snohomish argue that implementing the 100-kV threshold will be enormously costly. Public Power Council, for its part, argues that the Commission's rejection of evidence of such increased compliance costs was arbitrary and capricious since, inter alia, Public Power Council did provide specific assertions as to how the Final Rule will have a significant economic impact on small entities. The NYPSC requests rehearing on whether the Commission's decision to direct NERC to revise the bulk electric system definition to include facilities operated at 100 kV and above where the Commission failed to determine sufficient benefits in relation to the costs, resulting in the imposition of unnecessary costs without reliability benefits, was arbitrary, capricious, and an abuse of discretion. Snohomish states that it and many other entities operating in the Western Interconnection provided evidence demonstrating that imposition of the 100-kV threshold in the Western Interconnection will result of enormous compliance costs with no benefit to reliability since the 115-kV systems operated by these entities generally are used only for local distribution and their operation therefore has little or no effect on the interconnected bulk system.

Commission Determination

109. The Commission does not agree with commenters that its Regulatory Flexibility Act analysis was deficient, and we continue to believe that our suggested approach in Order No. 743 will not have a significant economic impact on a substantial number of small entities.[103] With respect to comments that we did not adequately consider the costs of implementing a 100 kV threshold, we note that the current bulk electric system definition contains a general 100 kV threshold. Thus, the burden of our suggested proposal to eliminate the regional discretion in the current definition and maintain a bright-line 100 kV threshold should be minimal in all regions except NPCC. Even within the U.S. portion of the NPCC region, the Commission estimated in the Final Rule that only four of the 33 transmission owners, transmission operators and transmission service providers may fall within the definition of small entities. We also believe that the exemption process will further ensure that the Final Rule minimally affects small entities. Finally, we have clarified on rehearing that NERC may develop criteria to identify local distribution facilities and certain categories of radial facilities that qualify for exclusion from the definition of the bulk electric system and therefore do not need to apply for exemption. For these reasons the Commission rejects the comments objecting to the Commission's determinations regarding the cost of implementing a 100 kV threshold.

110. However, the Commission will grant APPA's and NRECA's request for clarification in part. The Commission clarifies that it will perform a new Regulatory Flexibility Act analysis to determine whether the revised bulk electric system definition will have a significant economic impact on small entities when NERC submits its proposed definition, criteria for exclusion and the exemption process.[104] We believe that the revisions NERC will propose will be sufficiently different from the initial NOPR proposal to warrant additional review to ensure that small entities are not unduly burdened.

III. Document Availability

111. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

112. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

113. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6779 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

[103] Order No. 743, 133 FERC ¶ 61,150 at P 169.

[104] This analysis will determine if an Initial Regulatory Flexibility Analysis is required or if the Commission can certify that the revised definition will not have a significant economic impact on a substantial number of small companies.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–16–000; Order No. 749]

System Restoration Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act, the Commission approves three Emergency Operations and Preparedness (EOP) Reliability Standards, EOP–001–1 (Emergency Operations Planning), EOP–005–2 (System Restoration from Blackstart Resources), and EOP–006–2 (System Restoration Coordination) as well as the definition of the term "Blackstart Resource" submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization certified by the Commission. The approved Reliability Standards require transmission operators, generation operators, and certain transmission owners and distribution providers to ensure that plans, facilities and personnel are prepared to enable system restoration from Blackstart Resources and require reliability coordinators to establish plans and prepare personnel to enable effective coordination of the system restoration process. The Commission also approves the NERC's proposal to retire four existing EOP Reliability Standards and a definition that are replaced by the Standards and definition approved in this Final Rule.

DATES: *Effective Date:* This rule will become effective May 23, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Final Rule

Issued March 17, 2011.

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission approves three Emergency Operations and Preparedness (EOP) Reliability Standards, EOP–001–1 (Emergency Operations Planning), EOP–005–2 (System Restoration from Blackstart Resources), and EOP–006–2 (System Restoration Coordination) as well as the definition of the term "Blackstart Resource" submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization (ERO) certified by the Commission. The approved Reliability Standards require transmission operators, generation operators, and certain transmission owners and distribution providers to ensure that plans, facilities, and personnel are prepared to enable system restoration from Blackstart Resources and require reliability coordinators to establish plans and prepare personnel to enable effective coordination of the system restoration process. The Commission also approves NERC's proposal to retire four existing EOP Reliability Standards and the defined term "Blackstart Capability Plan" concurrent with the effectiveness of the Standards and the term Blackstart Resource approved in this Final Rule. In those jurisdictions where regulatory approval is required, Reliability Standard EOP–001–1 will not become effective until the first day of the first calendar quarter three months after regulatory approval is obtained, and EOP–005–2 and EOP–006–2 approved in this Final Rule will not become effective until 24 months after the first day of the first quarter after applicable regulatory approval.

2. "Blackstart" capability refers to the ability of a generating unit or station to start operating and delivering electric power without assistance from the electric system. Blackstart units are essential to restart generation and restore power to the grid in the event of an outage. As discussed below, NERC proposes to define "Blackstart Resource" as "a generating unit(s) and its associated set of equipment which has the ability to be started without support from the System or is designed to remain energized without connection to the remainder of the System, with the ability to energize a bus. * * *"

3. In Order No. 693, the Commission determined that it would not take action on certain proposed Reliability Standards that required supplemental information from a Regional Entity. Such Reliability Standards refer to regional criteria or procedures that had not been submitted to the Commission for approval and, as such, are referred to as "fill-in-the-blank" standards.[2] Pending Reliability Standard EOP–007–0 is one such fill-in-the-blank standard. The Reliability Standards approved herein provide a standardized, national approach to address the Commission's concerns regarding pending EOP–007–0, as set forth in Order No. 693. Thus, in addition to the retirement of certain currently effective EOP Reliability Standards, we also approve the withdrawal of pending Reliability Standard EOP–007–0.

I. Background

4. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC,[3] including the Reliability Standards: EOP–001–0, EOP–005–1, EOP–006–1, and EOP–009–0.[4] The Commission neither approved nor remanded EOP–007–0 because it applied only to regional reliability organizations, but Order No. 693 did provide guidance for the ERO's further consideration of the Reliability Standard.[5] In addition, under section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to the EOP Reliability Standards to address certain issues identified by the Commission. At issue in the immediate proceeding are two new EOP standards, EOP–005–2 and EOP–006–2 that would replace the currently effective Reliability Standards EOP–005–1, EOP–006–1, and EOP–009–0, pending Standard EOP–007–0, and necessitate a conforming change in EOP–001–0.

A. Currently Effective EOP Reliability Standards

Reliability Standard EOP–005–1

5. Currently effective Reliability Standard EOP–005–1 requires transmission operators, balancing authorities, and reliability coordinators to have a restoration plan, test the plan, train operating personnel in the restoration plan, and have the ability to restore the Interconnection using the plans following a blackout. In Order No. 693, the Commission directed the ERO to develop, through the Reliability Standard development process, a modification to EOP–005–1 that identifies time frames for training and review of restoration plan requirements to simulate contingencies and prepare operators for anticipated and unforeseen events.[6] The Commission also directed the ERO to consider various commenters' suggestions in future revisions of the Reliability Standard.[7]

Reliability Standard EOP–006–1

6. In Order No. 693, the Commission also approved Reliability Standard EOP–006–1 addressing reliability coordination and system restoration. The Reliability Standard sets requirements for reliability coordinators during system restoration and requires that they have a coordinating role to ensure reliability is maintained during system restoration. Under section 215 of the FPA, the Commission directed the ERO to develop a modification to EOP–006–1 to ensure that the reliability coordinator is involved in the development and approval of system restoration plans.[8]

Pending Reliability Standard EOP–007–0

7. Pending Reliability Standard EOP–007–0 deals with establishing, maintaining and documenting regional blackstart capability plans. In Order No. 693, the Commission did not act on EOP–007–0 pending NERC's providing additional information.[9] The Commission, however, directed the ERO to consider various commenters' suggestions relating to assigning compliance obligations directly to the entities that provide the pertinent data rather than to the Regional Entity, placing responsibility for the regional blackstart plan with the reliability coordinator, recognizing that nuclear units have no blackstart capability, revising the definition of a blackstart unit, and committing arrangements for coordinating blackstart capability to contracts.[10]

Reliability Standard EOP–009–0

8. Currently effective Reliability Standard EOP–009–0 deals with implementing and documenting testing

[1] 16 U.S.C. 824o.

[2] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, at P 297, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[3] *Id.* P 304–1899.

[4] *Id.* P 542–676.

[5] *Id.* P 644.

[6] *Id.* P 630.

[7] *Id.* P 628.

[8] *Id.* P 638.

[9] *Id.* P 297, 644.

[10] *Id.* P 642–643, 647.

of blackstart generating units. In Order No. 693, the Commission directed the ERO to consider suggestions for improvements raised during the comment period. One commenter stated the Reliability Standard should provide details on what constitutes a blackstart test and another stated that NERC should consolidate the Reliability Standard with EOP–007–0.[11]

B. NERC Petition

9. In a December 31, 2009 filing (NERC Petition),[12] NERC requests Commission approval of its proposed definition of the term "Blackstart Resource" and proposed Reliability Standards EOP–001–1 (Emergency Operating Planning),[13] EOP–005–2 (System Restoration from Blackstart Resources), and EOP–006–2 (System Restoration Coordination). NERC also seeks to concurrently retire four currently effective Reliability Standards: EOP–001–0, EOP–005–1, EOP–006–1, and EOP–009–0 as well as the definition of "Blackstart Capability Plan" and withdraw pending Reliability Standard EOP–007–0.

10. NERC states that the proposed Reliability Standards "represent significant revision and improvement from the current set of enforceable standards" and address the Commission's directives in Order No. 693 related to the EOP standards.[14] NERC explains that, among other enhancements, "[t]he proposed revisions now clearly delineate the responsibilities of the Reliability Coordinator and Transmission Operator in the restoration process and restoration planning."[15] NERC describes the proposed Reliability Standards as providing "specific requirements for what must be in a restoration plan, how and when it needs to be updated and approved, what needs to be provided to operators and what training is necessary for personnel involved in restoration processes."[16]

Proposed Definition of Blackstart Resource

11. NERC requests approval of the term "Blackstart Resource" and the concurrent retirement of the term "Blackstart Capability Plan." The proposed definition of "Blackstart Resource" is:

> A generating unit(s) and its associated set of equipment which has the ability to be started without support from the System or is designed to remain energized without connection to the remainder of the System, with the ability to energize a bus, meeting the Transmission Operator's restoration plan needs for real and reactive power capability, frequency and voltage control, and that has been included in the Transmission Operator's restoration plan.

The term "Blackstart Capacity Plan" is currently used solely in EOP–007–0 and EOP–009–0, both of which are replaced with proposed Reliability Standards EOP–005–2 and EOP–006–2.

Proposed Reliability Standard EOP–001–1

12. Proposed Reliability Standard EOP–001–1 contains seven requirements for the stated purpose of requiring each transmission operator and balancing authority to develop, maintain, and implement a set of plans to mitigate operating emergencies and to coordinate these plans with other transmission operators, balancing authorities, and the reliability coordinator.[17] It modifies EOP–001–0 by deleting Requirement R3.4, which requires transmission operators and balancing authorities to develop, maintain and implement restoration plans, because proposed Reliability Standards EOP–005–2 and EOP–006–2 incorporate and expand upon this Requirement.

Proposed Reliability Standard EOP–005–2

13. Proposed Reliability Standard EOP–005–2 contains eighteen requirements for the stated purpose of ensuring that plans, facilities, and personnel are prepared to enable system restoration from Blackstart Resources, and to ensure reliability is maintained during restoration and priority is placed on restoring the Interconnection.[18] The proposed Reliability Standard applies to transmission operators, generation operators, and transmission owners and distribution providers identified in the transmission operator's restoration plan. Requirement R1 requires each transmission operator to have a reliability coordinator-approved restoration plan utilizing Blackstart Resources and details the scope and elements of such a plan. Requirement R2 instructs each transmission operator to provide entities that have a role in the restoration plan with a description of their roles and tasks. Requirements R3 through R6 address annual plan reviews, updating practices, location of plans and plan verification. Following a disturbance, Requirements R7 and R8 provide guidance on following the plan or making needed adjustments and coordinating when re-synchronizing two systems together. Requirement R9 describes testing information the transmission operator must have to verify the Blackstart Resources meet required expectations. Requirements R10 through R12 cover system restoration training requirements for system operators and field switching personnel. Blackstart Resource agreements between the transmission operator and generator operator, or mutually agreed upon procedures or protocols are addressed in Requirement R13. Duties of a generator owner with a Blackstart Resource are provided in Requirements R14 through R18, which address operating procedures, change notification, testing for each Blackstart Resource and training of operating personnel on Blackstart Resources. Proposed Reliability Standard EOP–005–2 is intended to supersede all of currently effective Reliability Standard EOP–005–1.

Proposed Reliability Standard EOP–006–2

14. Proposed Reliability Standard EOP–006–2 contains ten requirements with the stated purpose of ensuring that the reliability coordinator establishes plans and prepares personnel to enable effective coordination of the system restoration process, to maintain reliability during restoration, and to place priority on restoring the Interconnection.[19] Requirement R1 requires reliability coordinators to have restoration plans that utilize Blackstart Resources and specifies the scope and elements of such plans. Requirement R2

[11] *Id.* P 674, 676.

[12] *North American Electric Reliability Corp.,* Dec. 31, 2009 Petition for Approval of Three Emergency Preparedness and Operations Reliability Standards and One New Glossary Term and for Retirement of Five Existing Reliability Standards and One Glossary Term. The three Reliability standards are included as Exhibit A to NERC's Petition. In addition, under 18 CFR 40.3 of the Commission's regulations, all Commission-approved Reliability Standards are available on NERC's Web site at *http://www.nerc.com/page.php?cid=2√20. See* 18 CFR 40.3.

[13] Concurrent with its filing in this Docket, NERC filed a petition in Docket No. RM10–15–000 seeking approval of certain Interconnection Reliability Operations and Coordination (IRO) Reliability Standards. As part of its IRO filing, NERC proposed to retire Requirement R2 of EOP–001–0. Each petition proposes unique changes to EOP–001–0 reflecting the distinct issues addressed by the respective Reliability Standards drafting teams. In this Final Rule, the Commission is addressing Version 2 of EOP–001 contained in Exhibit B of the NERC Petition which reflects both the IRO and the EOP proposed changes.

[14] NERC Petition at 4.

[15] *Id.* at 5.

[16] *Id.*

[17] Reliability Standard EOP–001–1, Section A.3. (Purpose).

[18] Reliability Standard EOP–005–2, Section A.4. (Purpose).

[19] Reliability Standard EOP–006–2, Section A.3. (Purpose).

covers distribution of the reliability coordinator's restoration plan. Requirements R3 through R5 provide for review of the reliability coordinator's restoration plan and the plans of each neighboring reliability coordinator and each transmission operator located in the reliability coordinator's area. Any conflicts between neighboring reliability coordinators' plans are to be resolved within thirty days, and transmission operators' plans shall be approved or disapproved, with stated reasons, within thirty days of receipt by the reliability coordinator. Requirement R6 requires that the reliability coordinator must maintain copies of restoration plans in its primary and backup control rooms. Requirements R7 and R8 describe the roles of reliability coordinators to coordinate restoration efforts and authorize re-synchronization of "island" areas. Requirements R9 and R10 address training and participation in annual drills, exercises and simulations. Proposed Reliability Standard EOP–006–2 is intended to supersede all of currently effective Reliability Standard EOP–006–1.

C. Notice of Proposed Rulemaking

15. On November 17, 2010, the Commission issued its Notice of Proposed Rulemaking (NOPR) proposing to approve the three proposed EOP Reliability Standards, EOP–001–1, EOP–005–2, and EOP–006–2 and defined term Blackstart Resource (and the retirement of the four superseded standards, EOP–001–0, EOP–005–1, EOP–006–1, and EOP–009–0, the definition of "Blackstart Capability Plan," and the ERO's withdrawal of EOP–007–0).[20] With respect to proposed Reliability Standard EOP–005–2, the NOPR proposed to direct NERC to modify the Standard to address the Commission's concern regarding the periodic testing of telecommunication facilities needed to implement restoration plans. In addition, the Commission sought comment on: (i) What is intended by the term "unique tasks" as used in the context of proposed Requirement R11 of EOP–005–2; (ii) whether guidance should be provided regarding the term, and if so, how it should be provided; and (iii) whether those tasks should be indentified in each transmission operator's restoration plan. With respect to proposed Reliability Standard EOP–006–2, the NOPR sought comment as to why the Standard does not require reliability coordinators to maintain a database of Blackstart Resources as is required of Regional Entities under currently effective EOP–007–0 and whether such a requirement would be beneficial. The NOPR also sought comment on: (i) Whether reliability coordinators should be required to verify their restoration planning through actual events, steady state and dynamic simulations or testing; and (ii) how a transmission operator should proceed when its restoration plan is rejected by a reliability coordinator. Lastly, the NOPR proposed that the ERO collect data on the performance of system restoration exercises conducted by transmission operators and reliability coordinators to assist the ERO and Commission in identifying the effectiveness of restoration plans, establishing best practices, and determining the effects on personnel performance.

16. In response to the NOPR, comments were filed by nine interested parties.[21] These comments assisted us in the evaluation of the NERC's proposal. In the discussion below, we address the issues raised by these comments.

II. Discussion

A. Approval of Proposed Reliability Standards

17. In the NOPR, the Commission proposed to approve the three EOP Reliability Standards and the glossary term filed by NERC in this proceeding. None of the nine interested parties filing comments to the NOPR objects to such an approval. For the reasons described below, the Commission adopts the NOPR proposal and approves Reliability Standards EOP–001–1, EOP–005–2, and EOP–006–2 as well as the proposed glossary term "Blackstart Resource" as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[22] EOP–005–2 and EOP–006–2 clarify the responsibilities of the reliability coordinator and transmission operator in the restoration process and restoration planning and address the Commission's directives in Order No. 693 related to the EOP Standards. By enhancing the rigor of the restoration planning process, the Reliability Standards represent an improvement from the current Standards and will improve the reliability of the Bulk-Power System. The Commission is not directing any modifications to the three new Reliability Standards. Nevertheless, as discussed below, commenters raised several issues for consideration, at the time these standards are next revisited, which we believe could improve these new Reliability Standards. The Commission also approves NERC retiring the four currently effective Reliability Standards, EOP–001–0, EOP–005–1, EOP–006–1, and EOP–009–0 as well as the definition of "Blackstart Capability Plan" and withdrawing pending Reliability Standard EOP–007–0 concurrent with the effectiveness of the EOP–001–1, EOP–005–2, and EOP–006–2 and the definition of the term "Blackstart Resource."

B. Vagueness of Term "Unique Tasks"

18. Requirement R11 of EOP–005–2 requires that a minimum of two hours of system restoration training be provided every two years to field switching personnel performing "unique tasks" associated with the transmission operator's restoration plan. In the NOPR, the Commission expressed concern that the applicable entities may not understand what the term "unique tasks" means. We requested comment on what is intended by that term and on whether guidance should be provided to the transmission operators, transmission owners, and distribution providers who are responsible for providing training. In addition, the NOPR sought comment as to whether the unique tasks should be identified in each transmission operator's restoration plan.

Comment

19. NERC comments that the term "unique tasks" is not intended to have any meaning beyond the dictionary definition of the words. Everyday tasks of field switching personnel are not considered unique, but tasks not included in the person's normal duties (*e.g.,* operation of a synchroscope) would be considered unique. NERC and APPA do not perceive a reliability benefit in requiring identification of unique tasks in restoration plans. NERC acknowledges that it could promote the development of guidance to aid entities in complying with Requirement R11.

20. EEI comments that while it would be difficult to define "unique tasks" in a manner that could be broadly applied to affected entities, the standards drafting team believed that the term was clearly understood as a practical matter. Companies should be afforded discretion to determine how the term is defined within their restoration plans, but, to the extent that compliance issues arise, EEI would encourage NERC to consider developing compliance

[20] *System Restoration Reliability Standards,* Notice of Proposed Rulemaking, 75 FR 71625 (Nov. 24, 2010), FERC Stats. & Regs. ¶ 32,666 (2010).

[21] NERC, The Edison Electric Institute (EEI), American Public Power Association (APPA), the ISO/RTO Council (IRC), Pacificorp, City of Santa Clara, California (Santa Clara), Bonneville Power Administration (BPA), and NorthWestern Corporation (NorthWestern) filed comments. Wisconsin Electric Power Company filed supporting EEI's comments.

[22] 16 U.S.C. 824o(d)(2).

guidance as needed. IRC also believes the term is generally understood by the applicable entities and that it is appropriate for each transmission operator's restoration plan to identify the particular tasks for which training is required.

21. APPA states that the diversity of entities and their specific approaches to system restoration prevented the standard drafting team from developing guidance on the term but agrees that registered entities could benefit from a best practices document that provides examples of unique tasks.

22. Santa Clara comments that a one-size-fits-all definition would not be helpful, and the affected entities should define unique tasks on a case-by-case basis. It agrees that unique tasks should be included within the transmission operator's restoration plan. Pacificorp comments that training should be provided to field switching personnel performing any restoration tasks associated with implementing the transmission operator's restoration plan. Addressing each sub-Requirement of Requirement R1 would provide an appropriate framework for a system restoration training program. Pacificorp and NorthWestern oppose additional guidance or requirements in the Standard. BPA, on the other hand, is unsure what is intended by the term "unique tasks" and supports a specific definition to avoid any ambiguity.

Commission Determination

23. Based on NERC's comment that the term "unique tasks" is to be understood in accordance with the normal meaning of the words and the majority of the commenters' assertions that the variety of approaches to system restoration precludes greater specificity, we find that the term conveys as much precision as circumstances allow. To the extent that it would be helpful to the affected entities to specify in a transmission operator's restoration plan which tasks are deemed unique, the entities are encouraged to do so, but the Commission does not require such specificity at this time.

24. Both EEI and APPA recognize potential benefit in the development of further guidance as to the term "unique tasks," and BPA is uncertain as to the meaning of the term and consequently unsure as to how to demonstrate compliance with its training obligation. NERC, in its comments about the term, states that it "could promote the development of a guideline to aid registered entities in complying with Requirement R11."[23] The Commission notes that this Reliability Standard will not become effective for at least 24 months, during which time ambiguities in language or differences of opinion among affected entities may be resolved in practical ways. Once the Standard is effective, if industry determines that ambiguity with the term arises, it would be appropriate for NERC to consider its proposal to develop a guideline to aid entities in their compliance obligations.

C. Telecommunication Facility Testing

25. Requirement R5 of Reliability Standard EOP–005–1 provides for periodic testing of telecommunication facilities needed to implement restoration plans, but this Requirement has no counterpart in EOP–005–2. In the NOPR, the Commission proposed requiring the ERO to develop a modification to EOP–005–2 to address the Commission's concern that entities involved in system restoration ensure restoration-specific telecommunications equipment, phone lists, and protocols are tested as part of ongoing restoration preparedness. The Commission further stated its concern that, in light of the importance of communication to the restoration process, testing should be done more frequently than during annual drills, exercises or simulations as is required under Reliability Standard EOP–005–1.

Comments

26. Each of the commenters opposes adding a telecommunications requirement to EOP–005–2 on the basis that such a requirement would be redundant given Communications Reliability Standard COM–001–1.1, which requires testing of routine communication facilities on an on-going basis. Several comments noted that duplicative requirements can lead to potential confusion.

Commission Determination

27. Reliability Standard COM–001–1 does not apply to generation operators or distribution providers.[24] Further, we do not accept that each entity whose telecommunications facilities will be needed during the system restoration process is currently subject to COM–001–1.1 Requirement R2 which provides that "[e]ach Reliability Coordinator, Transmission Operator and Balancing Authority shall manage, alarm, test and/or actively monitor vital telecommunications facilities. Special attention shall be given to emergency telecommunications facilities and equipment not used for routine communications."

28. NERC notes in its comments that the Reliability Coordination Standard Drafting Team is currently working on Project 2006–06 to develop a set of revisions to Reliability Standard COM–001–1.1 to tighten requirements relating to communication capabilities. The Commission believes the objectives of this project in managing, alarming, testing and/or actively monitoring vital primary and emergency telecommunication facilities will close this gap in the Reliability Standard after it is completed and approved. Accordingly, consistent with NERC's comments on its current project and concerns not to create redundancy in development of Reliability Standards, NERC should close the gap in the applicability of the draft COM–001–2 so it addresses generation operators and distribution providers.

D. Emergency Operations Planning

29. Reliability Standard EOP–005–2 requires each transmission operator to identify each blackstart resource and its characteristics, but this requirement has no counterpart for reliability coordinators in EOP–006–2. The Commission expressed concern and invited comment in the NOPR on whether the absence of a required list of its Blackstart Resources could deny the reliability coordinator a potentially useful tool in maintaining reliability.

Comments

30. NERC notes that the transmission operator, not the reliability coordinator, maintains direct contact with the blackstart resources, and reliability coordinators have sufficient authority to request information needed to identify blackstart resources should such information be required. NERC, EEI, IRC, and APPA do not believe a requirement to maintain a database of blackstart resources would improve reliability. Santa Clara, however, requests that the Commission direct NERC to revise Requirement R2 of Reliability Standard EOP–005–2 to specify that transmission operators provide copies of their restoration plans to those entities included in the plan within 60 days of the plan's approval by the appropriate reliability coordinator to ensure that resources identified in the plan are capable of complying with the plan.

Commission Determination

31. Since a reliability coordinator obtains copies of all its constituent transmission operators' restoration plans and has the ability to obtain

[23] NERC at 4–5.

[24] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 478–493.

information regarding the identity and characteristics of blackstart resources from its transmission operators, we agree there is no reliability need for it to maintain a duplicative database. With regard to Santa Clara's request, we believe that the determination whether resources in a restoration plan are capable of complying with the plan is made during the transmission operator's development of its plan as required by Requirement R1, not once the plan is approved by the reliability coordinator. For this reason, we do not see a need to direct the modification to Requirement R2 that Santa Clara requests.

E. System Restoration Coordination

32. Reliability Standard EOP–005–2 requires each transmission operator to verify that its restoration plan achieves its intended function. There is no similar requirement in EOP–006–2 regarding the reliability coordinator's restoration plan. The Commission sought comment on whether the same or a similar requirement should apply to reliability coordinators. In addition, the Standard also requires reliability coordinators to approve, or disapprove with written reasons, the restoration plans of each of their constituent transmission operators. The Commission invited comment as to how a transmission operator should proceed when its restoration plan is rejected by a reliability coordinator.

Comments

33. NERC, EEI, and IRC comment that a reliability coordinator's restoration plan is essentially a compilation of the restoration plans of its constituent transmission operators. Given that EOP–005–2 requires transmission operators to verify their restoration plans and that EOP–006–2 requires reliability coordinators to conduct system restoration drills with their constituent transmission operators and generation owners, requiring further verification of the same plans by the reliability coordinator would be duplicative and not provide additional reliability benefit.

34. With respect to how a transmission operator should proceed when its reliability coordinator rejects its restoration plan, NERC states that when a restoration plan is rejected by a reliability coordinator, the reliability coordinator is required to supply one or more reasons for its rejection, and the transmission operator should then be able to re-submit a revised plan. NERC does not believe it is necessary to document this process in additional requirements since the dialogue between the two entities is no different than the routine coordination that normally occurs between the transmission operator and its reliability coordinator. EEI, APPA, and IRC agree that there is no need for additional procedures to be spelled out.

35. IRC, BPA, and Santa Clara all comment that the reliability coordinator should be the final authority to resolve conflicts. Santa Clara nevertheless states that if the transmission operator and reliability coordinator cannot resolve their differences because the transmission operator believes compliance with the reliability coordinator's decision is infeasible, the transmission operator should be allowed to appeal either to the Regional Entity or, in the case of the Western Interconnect, the dispute should be brought to NERC.

36. EEI observes that the two-year implementation period for these Standards will likely provide sufficient time to resolve any differences in order for a reliability coordinator to approve a transmission operator's initial restoration plan. Any subsequent rejection of a revised restoration plan will not result in a reliability gap since the initial plan will remain in place. EEI further notes that any rejection of a restoration plan by a reliability coordinator will necessarily be based on generic reliability engineering criteria readily understood by the transmission operator. Pacificorp, on the other hand, notes that the requirement that the reliability coordinator give stated reasons for any disapproval of a submitted restoration plan does not ensure the reasons will specify the circumstances under which a transmission operator should revise its plan. Pacificorp states that a reliability coordinator must have formal criteria for reviewing, approving and disapproving restoration plans and standard procedures for those plans to be revised and resubmitted for review. Pacificorp also suggest a modification to Requirement R5 to provide that a transmission operator's submitted restoration plan shall be deemed approved if the reliability coordinator fails to approve or disapprove the plan within the required 30 days.

Commission Determination

37. We accept the commenters' position that requiring verification of the reliability coordinators' restoration plan through a requirement in EOP–006–2 would be largely duplicative. As commenters point out, Reliability Standard EOP–006–2 requires reliability coordinators to conduct system restoration drills including their constituent transmission operators and generation owners. Such drills, exercises or simulations, together with the verifications carried out by the transmission operators of their restoration plans and approval of their plans by the reliability coordinators under EOP–005–2, serve as verification of the reliability coordinators' plans and as such, should serve to identify difficulties in a reliability coordinator's restoration plan.

38. We agree with EEI that the basis on which a reliability coordinator rejects a restoration plan will necessarily be based on generic engineering criteria easily understood by the transmission operator. We also agree with those commenters who reaffirm that the ultimate arbiter of coordination and compatibility of transmission operators' restoration plans is the reliability coordinator. For these reasons, we do not see a need to direct modifications as Pacificorp and Santa Clara suggest that could circumvent the reliability coordinator's authority concerning the approval or disapproval of a restoration plan. However, we agree with Pacificorp that Reliability Standard EOP–006–2, which establishes requirements to enable coordinated system restoration and ensure reliability is maintained during system restoration, is not the appropriate place to include any specific criteria or procedures for the review and revision of transmission operators' restoration plans. We recognize that documenting such criteria and procedures may have utility in facilitating the settlement of disagreements when a reliability coordinator rejects a transmission operator's restoration plan. Nonetheless, we leave it to the ERO Reliability Standard development process to determine whether the merit is sufficient to compel the development of such criteria or procedures.

F. Data Reporting

39. Given the importance of effective blackstart and restoration plans and well-trained personnel, the NOPR proposed that the ERO collect data on the performance of system restoration exercises and make such data available to transmission operators, reliability coordinators and the Commission. This data could then be used to identify the effectiveness of restoration plans and help identify improvements to enhance restoration. The Commission sought comment on the proposed data collection.

Comments

40. NERC notes that formal debriefings are held after each required

drill and is unclear whether there would be any additional reliability benefit arising from the data collection contemplated in the NOPR. EEI proposes that companies should be allowed to gather experience on the new requirements before undertaking data collection efforts and points out that the North American Transmission Forum (NATF) would be an appropriate venue for discussions on the efficacy of various training experiences. BPA and NorthWestern also cite NATF as an appropriate venue to share best practices. BPA views its restoration information as extremely sensitive and perceives risk that such information could fall into the wrong hands.

41. NERC, EEI, APPA, Pacificorp, and NorthWestern question the reliability benefit of creating such a database compared to the burden it would impose on the industry. NERC asks whether developing such a database would direct industry resources where they can best serve reliability. IRC does not see the value of the proposed data gathering, but notes section 1600—Requests for Data or Information of NERC's Rules of Procedure [25] could be an appropriate means of collecting data without creating an ongoing requirement.

Commission Determination

42. The Commission agrees with NERC that the formal debriefing of system restoration drills, exercises and simulations can capture lessons learned and identify best practices. But lessons learned in such debriefings are not necessarily communicated to all who might benefit from them. In addition, the Commission understands that NATF may be an appropriate forum to discuss industry activity and best practices, but we continue to believe that there would be a reliability benefit in the ERO aggregating and disseminating lessons learned derived from restoration drills, exercises and simulations. Nevertheless, we will allow the industry to develop some experience with the new Reliability Standards and then review whether or not to pursue this matter under section 39.2(d) of the Commission's regulations and the use of Requests for Data or Information under section 1600 of NERC's Rules of Procedure or through some other means.

G. Violation Risk Factors/Violation Severity Levels

43. In the NOPR, the Commission proposed deferring action on the proposed violation risk factors (VRF) and violation severity levels (VSL) for the proposed Reliability Standards until the Commission acts on NERC's pending petition in Docket No. RR08–4–005, in which NERC proposes a "roll-up" approach for VRF and VSL assignments by which NERC would only assign VRF and VSL to the main requirements and not to sub-Requirements.[26] Subsequent to the NOPR, on December 1, 2010, NERC made a compliance filing to the Commission in Docket No. RR08–04–006 submitting new VSL to supersede those presented in the NERC Petition.

Commission Determination

44. No comments were received regarding this matter. Accordingly, the Commission will defer discussion on the proposed violation risk factors and violation severity levels assigned to EOP–005–2 and EOP–006–2 until after the Commission issues a final order acting on NERC's petition in Docket No. RR08–4–005 and Docket No. RR08–4–006.

III. Information Collection Statement

45. The following collections of information contained in this Reliability Standard have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1955.[27] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[28]

46. The Commission solicited comments on the need for and the purpose of the information contained in these three Emergency Operations and Performance Reliability Standards and the corresponding burden to implement them. The commission received comments on its proposed data reporting requirement regarding the performance of system restoration exercises which we address in this Final Rule. The Commission has not directed any modifications to the Requirements in the three Reliability Standards being approved. As a result of this Final Rule the annual burden will increase by an estimated 47,472 hours. This is a reduction from the burden estimates provided in the NOPR, with respect to reporting data to NERC; however, we have not similarly reduced the estimated time expended by reliability coordinators on recordkeeping in order to better reflect their enhanced involvement in the planning process.

47. *Burden Estimate:* The estimated burden and for the requirements in this Final Rule follow:

FERC–725A data collection	Number of respondents (A)	Number of annual responses per respondent (B)	Hours per respondent per response (C)	Total annual hours (A × B × C)
Reliability Coordinators data retention	26	2	Recordkeeping: 8	Recordkeeping: 416.
Transmission operators reporting data to their reliability coordinator and reducing blackstart arrangements to writing.	176	1	Compliance: 116 Recordkeeping: 16	Compliance: 20,416. Recordkeeping: 2,816.
Generator operator system restoration responsibilities including testing and maintaining records.	230	1	80	18,400.
Transmission owner and distribution provider training and recordkeeping.	678	1	8	5,424.
Total				47,472 hours.

[25] North American Electric Reliability Corporation, Rules of Procedure 85–87 (2011), *available at http://www.nerc.com/files/NERC_Rules_of_Procedure_ EFFECTIVE_20110101.pdf.*

[26] Docket No. RR08–4–005 comprises NERC's March 5, 2010 Violation Severity Level Compliance Filing submitted in response to Order No. 722 and an August 10, 2009 informational filing in which NERC proposes assigning VRF and VSL only to the main Requirements in each Reliability Standard and not to the sub-requirements.

[27] 44 U.S.C. 3507(d).

[28] 5 CFR 1320.11.

• *Total Estimated Annual Hours for Collection:* (Reporting/Compliance + recordkeeping) = 47,472 hours.

• *Reporting/Compliance* = 44,240 hours @ $132/hour = $5,839,680.

• *Recordkeeping* = 3,232 hours @ $17/hour = $54,944.

• *Total Cost* = $5,894,624.

• *Title:* Mandatory Reliability Standards for the Bulk-Power System.

• *Action:* FERC 725A, Proposed Modification to FERC–725A.

• *OMB Control No:* 1902–0244.

• *Respondents:* Business or other for profit, and/or not for profit institutions.

• *Frequency of Responses:* On occasion.

• *Necessity of the Information:* This Final Rule would approve revised Reliability Standards that modify the existing requirement for system restoration from a blackstart. The proposed Reliability Standards require some entities to commit agreements or understandings to writing and/or to draft written procedures, and retain records. Other entities may have to produce and maintain training materials.

48. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this order may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control Number 1902–0244 and the docket number of this rulemaking in your submission.

IV. Environmental Analysis

49. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[29] The action taken in the Final Rule falls within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[30] Accordingly, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

50. The Regulatory Flexibility Act of 1980 (RFA)[31] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[32] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[33]

51. Many of the entities to which the requirements of this rule would apply do not fall within the definition of small entities, but most transmission owners, and most distribution providers would be deemed small entities. The proposed Reliability Standards clarify the elements of restoration plans and training requirements and give reliability coordinators a greater role in review and approval of plans, but the proposed Reliability Standards reflect primarily a continuation of existing system restoration requirements currently applicable to reliability coordinators, transmission operators and generation operators.

52. Based on available information regarding NERC's compliance registry, and our best assessment of the application of the proposed Reliability Standards, approximately 1,110 entities will be responsible for compliance with proposed Reliability Standards EOP–005–2 and EOP–006–2, of which approximately 678 are transmission owners and distribution providers not already subject to the existing system restoration Reliability Standards. Of the 678 transmission owners and distribution providers, only that subset whose field switching personnel are identified in the restoration plan as having unique tasks will be subject to a new requirement under the proposed standards, i.e., providing two hours of system restoration training every two calendar years to such personnel. The Commission estimates that this requirement will impose a cost of perhaps $1,056 per year on transmission owners and distribution providers, (and indeed for some entities there will be only de minimis additional cost because field personnel are already being trained in restoration tasks) and therefore should not present significant operating costs.

53. Based on this understanding, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

54. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

55. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

56. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

57. These regulations are effective May 23, 2011. The Commission notes that although the determinations made in this Final Rule are effective May 23, 2011 in those jurisdictions where regulatory approval is required, Reliability Standard EOP–001–1 will not become effective until the first day of the first calendar quarter three months after regulatory approval is obtained, and EOP–005–2 and EOP–006–2 approved in this Final Rule will not become effective until 24 months

[29] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[30] 18 CFR 380.4(a)(5).

[31] 5 U.S.C. 601–12.

[32] 13 CFR 121.101.

[33] 13 CFR 121.201, Sector 22, Utilities & n. 1.

after the first day of the first quarter after applicable regulatory approval. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6739 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: By Resolution No. 2010–13 on December 8, 2010, the Delaware River Basin Commission (DRBC or "Commission") approved amendments to its Water Quality Regulations, Water Code and Comprehensive Plan to update the Commission's human health and aquatic life stream quality objectives (also called water quality criteria) for toxic pollutants in the Delaware Estuary (DRBC Water Quality Zones 2 through 5) and extended application of the criteria to Delaware Bay (DRBC Water Quality Zone 6).

DATES: *Effective Date:* March 23, 2011. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of March 23, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about the technical basis for the rule, please contact Dr. Ronald MacGillivray at 609–477–7252.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York, and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the Federal government.

Notice of the proposed amendments appeared in the **Federal Register** (75 FR 41106) on July 15, 2010 as well as in the Delaware Register of Regulations (14 DE Reg. 70–83 (08/01/2010)) on August 1, 2010, the New Jersey Register (42 N.J.R. 1701(a)) on August 4, 2010, the New York State Register (p. 6) on July 21, 2010 and the Pennsylvania Bulletin (40 Pa. B. 4208) on July 31, 2010. A public hearing was held on September 23, 2010 and written comments were accepted through October 1, 2010. The commission received two written submissions and no oral testimony on the proposed changes. The Commission made minor revisions to the proposed amendments in response to the comments received. A comment and response document setting forth the Commission's responses and revisions in detail was approved by the Commission simultaneously with adoption of the final rule.

Resolution No. 2010–13, the text of the final rule, a copy of the comment and response document, and a basis and background document published simultaneously with the proposed rule are available on the Commission's Web site, at *http://www.state.nj.us/drbc/toxics_info.htm.*

List of Subjects in 18 CFR Part 410

Incorporation by reference, Water audit, Water pollution control, Water reservoirs, Water supply, Watersheds.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends part 410 of title 18 of the Code of Federal Regulations as follows:

PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART III WATER QUALITY REGULATIONS

■ 1. The authority citation for part 410 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 2. Amend § 410.1 by revising the first sentence of paragraph (c) to read as follows:

§ 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

* * * * *

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to regulations contained within the Delaware River Basin Water Code with Amendments Through December 8, 2010 and the Administrative Manual—Part III Water Quality Regulations with Amendments Through December 8, 2010. * * *

Dated: March 15, 2011.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2011–6636 Filed 3–22–11; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2002–F–0198] (formerly Docket No. 2002F–0316)

Food Additives Permitted for Direct Addition to Food for Human Consumption; Bacteriophage Preparation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of requests for a hearing and stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying requests that it has received for a hearing on the final rule that amended the food additive regulations to provide for the use of a bacteriophage preparation as an antimicrobial agent against *Listeria monocytogenes* on ready-to-eat (RTE) meat and poultry products. After reviewing the objections to the final rule and the requests for a hearing, the Agency has concluded that the objections do not raise issues of material fact that justify a hearing or otherwise provide a basis for revoking the amendment to the regulation. FDA also is denying the request for a stay of the effective date of the final rule.

DATES: Effective date of the final rule published in the **Federal Register** of August 18, 2006 (71 FR 47729) confirmed: August 18, 2006.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1303.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA published a notice in the **Federal Register** of July 22, 2002 (67 FR 47823), announcing the filing of food additive petition, FAP 2A4738, by Intralytix Inc., to amend the food additive regulations by providing for the safe use of a

mixture of bacteriophages as an antimicrobial agent against *L. monocytogenes* on foods, including fresh meat products, fresh poultry, and poultry products. On December 18, 2003, the petitioner amended the petition to limit the petitioned use only to RTE meat and poultry products. In response to this petition, FDA issued a final rule in the **Federal Register** of August 18, 2006 (71 FR 47729), approving the use of the bacteriophage preparation on RTE meat and poultry products. This rule will be referred to in this document as the "bacteriophage final rule." The preamble to the final rule advised that objections to the final rule and requests for a hearing were due within 30 days of the publication date (*i.e.,* by September 18, 2006).

II. Objections, Requests for a Hearing, and Request for a Stay of Effective Date

Section 409(f) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(f)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, specifying with particularity the provisions of the order "* * * deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections * * *." FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (*Community Nutrition Institute* v. *Young,* 773 F.2d 1356, 1364 (DC Cir. 1985), *cert. denied,* 475 U.S. 1123 (1986)).

Under the food additive regulations at 21 CFR 171.110, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the bacteriophage final rule, FDA received more than 70 objections within the 30-day objection period. All but one of these submissions expressed general opposition to the use of the bacteriophage preparation on RTE meat and poultry products; however, no evidence was submitted in support of these objections. As stated previously, under section 409(f)(1) of the FD&C Act, objections must "[specify] with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor * * *." These submissions did not provide reasonable grounds and identified no substantive issue to which the Agency can respond. Therefore, these submissions are denied and will not be considered further. The submission raising specific objections was a letter from Food & Water Watch (FWW) with six objections. The FWW letter sought a revocation of the bacteriophage final rule and requested a hearing on the issues raised by each objection. The letter also requested that the regulation be stayed pending a public hearing of the scientific issues. These objections are addressed in section IV of this document.

III. Standards for Granting a Hearing

Specific criteria for deciding whether to grant or deny a request for a hearing are set out in § 12.24(b). Under that regulation, a hearing will be granted if the material submitted by the requester shows, among other things, the following: (1) There is a genuine and substantial factual issue for resolution at a hearing; a hearing will not be granted on issues of policy or law; (2) the factual issue can be resolved by available and specifically identified reliable evidence; a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions; (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requester; a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate; (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested; a hearing will not be granted on factual issues that are not determinative with respect to the action requested (*e.g.,* if the action would be the same even if the factual issue were resolved in the way sought); (5) the action requested is not inconsistent with any provision in the FD&C Act or any FDA regulation; and (6) the requirements in other applicable regulations, *e.g.,* 21 CFR 10.20 and §§ 12.21 and 12.22, and in the notice issuing the final regulation or the notice of opportunity for hearing are met.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing" (*Costle* v. *Pacific Legal Foundation,* 445 U.S. 198, 214–215 (1980), *reh. denied,* 446 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test (*Georgia Pacific Corp.* v. *U.S. Environmental Protection Agency,* 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute and a party is entitled to judgment as a matter of law. (*See* Rule 56, Federal Rules of Civil Procedure.) The same principle applies in administrative proceedings. (*See* § 12.28.)

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held (*Pineapple Growers Association* v. *FDA,* 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the Agency need not grant a hearing (*see Dyestuffs & Chemicals, Inc.* v. *Flemming,* 271 F.2d 281, 286 (8th Cir. 1959), *cert. denied,* 362 U.S. 911 (1960)). A hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue" (*Pactra Industries* v. *Consumer Product Safety Commission,* 555 F.2d 677, 684 (9th Cir. 1977)). A hearing need not be held to resolve questions of law or policy (*see Citizens for Allegan County, Inc.* v. *Federal Power Commission,* 414 F.2d 1125, 1128–29 and n.5 (D.C. Cir. 1969); *Sun Oil Co.* v. *Federal Power Commission,* 256 F.2d 233, 240–41 (5th Cir.), *cert. denied,* 358 U.S. 872 (1958)).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party cannot raise that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality can be validly applied to the administrative process. In explaining

why these principles "self evidently" ought to apply to an Agency proceeding, the U.S. Court of Appeals for the District of Columbia Circuit wrote: "The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than one fair opportunity." *Retail Clerks Union, Local 1401* v. *National Labor Relations Board,* 463 F.2d 316, 322 (DC Cir. 1972). (*See Costle* v. *Pacific Legal Foundation,* supra at 215–220. *See* also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.,* 404 F.2d 804 (DC Cir. 1968), *cert. denied,* 393 U.S. 1093 (1969).)

In summary, a hearing request must present sufficient credible evidence to raise a material issue of fact and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

IV. Analysis of Objections and Response to Hearing Requests

The FWW submission raises six objections based on issues that they believe to be factual and requests a hearing based on these objections. FDA addresses each of the objections in the following paragraphs, as well as the evidence and information filed in support of each, comparing each objection and the information submitted in support of it to the standards for granting a hearing in § 12.24.

A. FWW's Assertion That FDA Failed To Follow Its Own Guidelines

FWW claims that FDA failed to follow its own guidelines for assessing the safety of food additives. Specifically, FWW states that FDA did not "certify" that it followed the procedures stated in current publications of the National Academy of Sciences/National Research Council (NAS/NRC) when reviewing the bacteriophage petition, or if different procedures were used, FDA did not "certify" that they are as reliable as the NAS/NRC procedures, as FWW states is required by § 170.20 (21 CFR 170.20). FWW also contends that FDA did not comply with the testing set forth in its own guidance entitled "Toxicological Principles for the Safety Assessment of Food Ingredients," otherwise known as FDA's Redbook, or establish a 100-fold safety factor for the additive as set forth in 21 CFR 170.22. If a different safety factor was used, FWW asserts that FDA did not provide evidence to justify a different safety factor. FWW also questions the relevance and applicability of the various studies relied on by the petitioner to show safety because of either: (1) Deficiencies with how the studies were conducted, (2) the studies investigated efficacy rather than safety, or (3) the substance tested is not the same bacteriophage that is the subject of the petition.

Contrary to what FWW appears to assert, FDA notes that the Agency does not "certify" that the procedures used in evaluating a food additive petition either followed the current NAS/NRC procedures or were as reliable as those procedures. Section 170.20 sets forth the general scientific principles that FDA uses in evaluating a food additive petition and cites the principles and procedures stated in current publications of the NAS/NRC as a guide that the Agency uses in its safety evaluations of food additives. Nevertheless, FDA has consistently taken the position that many scientifically valid types of data may properly support a finding that the proposed use of a food additive will cause "no harm" to consumers. Moreover, § 170.20(a) specifically states that "A petition will not be denied, however, by reason of the petitioner's having followed procedures other than those outlined in the publications of the National Academy of Sciences-National Research Council if, from available evidence, the Commissioner finds that the procedures used give results as reliable as, or more reliable than, those reasonably to be expected from the use of the outlined procedures." Similarly, NAS/NRC acknowledges in the conclusions of its document regarding procedures for evaluating the safety of food chemicals that the document's purpose is to "guide and stimulate—not replace—informed professional and administrative judgment" (Ref. 1).

FDA did not request the petitioner to carry out studies recommended in NAS/NRC guidelines because the bacteriophages that are the active component of the food additive infect *L. monocytogenes* exclusively, and not mammalian cells. (*See* discussion at 71 FR 47729 at 47730). As such, traditional animal testing of the additive as recommended by NAS/NRC for food chemicals, is neither necessary nor helpful to demonstrate that the petitioned use of the additive is safe.

Regarding the use of safety factors, the use of a safety factor is intended to account for the uncertainty of extrapolating animal toxicity data to humans. Because bacteriophages do not infect mammals, the use of a safety factor is unnecessary to provide adequate assurance of safety.

Similarly, due to the nature of this food additive, there is no need to assign a concern level as set forth in the Redbook. FDA's Redbook provides guidance that represents the Agency's current thinking on the information needed for the safety assessment of food ingredients. As with any Agency guidance, the Redbook does not bind the petitioner or the Agency to follow specific procedures that are recommended. Alternative approaches are permissible if such approaches satisfy the requirement of the applicable statute and regulations. Importantly, the statute does not prescribe the safety tests to be performed but leaves that determination to the discretion and scientific expertise of FDA. Not all food additives require the same amount or type of testing. The testing and data necessary to establish the safety of an additive will vary depending on the type and characteristics of a particular additive and its intended use. Concern levels are used to determine the recommended toxicity tests for an additive. It was unnecessary to assign a concern level in the present case, because FDA's primary concern about the subject additive was the safety of potential residual components from the host organism, *L. monocytogenes,* and not the bacteriophages themselves.

One such residue of concern was Listeriolysin O (LLO), an exotoxin produced by the host organism. To address this concern, the petitioner analyzed the bacteriophage preparation for LLO and was unable to detect it using a method sensitive to 5 hemolytic units per milliliter (HU/ml). Even when the food additive was concentrated 10-fold, the petitioner still did not detect any hemolytic activity. Although LLO was not detected in the bacteriophage preparation, FDA established a specification of 5 HU/ml for the maximum amount of LLO permitted in the bacteriophage preparation as a condition of safe use, which is the limit of detection for the method provided by the petitioner. FDA concluded that the potential residues of LLO that may be found in the food additive are negligible (*i.e.,* 5 HU/ml or less) and do not pose a safety concern for the use of the food additive as an antimicrobial agent on RTE meat and poultry products. Furthermore, as discussed in the bacteriophage final rule, the presence of any small amount of LLO in the bacteriophage preparation may be mitigated by the following factors: Inactivation of LLO by cholesterol that is present in RTE meat and poultry products; inactivation of LLO by the low stomach pH; and inactivation of orally consumed LLO by human defense mechanisms (*e.g.,* normal intestinal microflora and cell-mediated immunity reactions) and degradation by

proteolytic enzymes in the diet or in the stomach. FDA concluded that reliable alternative methods from NRC/NAS procedures were used to establish the safety of the bacteriophage preparation for its use on RTE meat and poultry products, and that the data considered for this regulation, when evaluated in its entirety, are sufficient to support the safety of the bacteriophage preparation for that use.

FWW's submission provides no evidence that FDA failed to follow its own guidelines for assessing the safety of food additives. The FWW submission does not raise a genuine and substantial issue of fact and does not provide any specifically identified reliable evidence that, if established at a hearing, would be adequate to demonstrate that FDA acted in violation of its governing statutes and regulations. Thus, a hearing is not justified based on this objection (§ 12.24(b)(1), (b)(2), and (b)(3)).

B. Inactivation of LLO By Stomach Acid and Cholesterol

FWW contends that FDA relies on conjecture in concluding that foods treated with a bacteriophage preparation are safe for human consumption. Specifically, FWW asserts that FDA's conclusion that any residual LLO will be inactivated by factors such as cholesterol in the meat or poultry, acidity within the stomach, and proteolytic enzymes present in the food or in the stomach is based on unsupported assumptions and not experimental data. Regarding the inactivation of LLO by cholesterol, FWW's asserts that FDA's conclusion about mitigation of LLO by cholesterol was not based on any data on the levels of cholesterol in meat necessary to inactivate LLO, and that the mechanism for the inactivation of LLO by cholesterol is "not yet fully understood by researchers." FWW also states that there is a need for a more thorough study to investigate the reaction of certain sensitive population groups to this bacteriophage preparation.

As stated in the bacteriophage final rule, the toxicity of LLO has been shown to be significantly reduced—by as much as 200- to 2,000-fold—following pre-incubation of LLO with added cholesterol in vitro, based on results of a study conducted by Jacobs et al (Ref. 2). The results showed that there is almost no hemolytic if LLO is pretreated with cholesterol at 1 milligram/100 grams (mg/100g). It is well established that there are relatively high concentrations of cholesterol in RTE meat and poultry products (approximately 38 to 156 mg/100 g (Ref. 3)). Therefore, since the bacteriophage preparation is to be used on RTE meat and poultry products, and these products contain significant amounts of cholesterol, the findings from Jacobs et al. directly support FDA's conclusion about inactivation of LLO by cholesterol in RTE meat and poultry products. While the mechanism by which added cholesterol inhibits LLO may not be fully understood, that does not undermine the evidence that supports the Agency's conclusion.

Regarding inactivation of LLO by acidity, the data considered by FDA in its review of the petition indicate that LLO has activity only within a pH range between 4.9 and 8 while losing activity at a pH outside this range, especially in very acidic (low pH) or very alkaline (high pH) environments. Since the pH inside the stomach is normally between 1.0 and 3.5 (Ref. 4), the acidic environment in the stomach would be a defense against any residual LLO from the use of the additive. No data were submitted by FWW to the contrary, nor was any information provided that would justify the need for studies to investigate the reaction of certain sensitive population groups to the bacteriophage preparation. Because FWW provided no evidence to support these contentions, FDA is denying the request for a hearing on these issues; a hearing will not be granted on the basis of mere allegations or denials or general positions and contentions (§ 12.24(b)(2)).

C. FWW's Contention That Petitioner's Efficacy Studies Are Inadequate

FWW contends that the results of the efficacy studies for the bacteriophage preparation submitted by the petitioner are inadequate to show that the preparation will sufficiently control *L. monocytogenes* in RTE meat and poultry products. In addition, FWW points out that some other methods for killing bacteria achieve a greater log reduction of bacteria than the bacteriophage preparation.

During its evaluation of FAP 2A4738, FDA consulted with the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA), consistent with 21 CFR 171.1(n) and with a memorandum of understanding (MOU) between the two Agencies for reviewing the safety of substances used in the production of meat and poultry products. Under the MOU, FDA is responsible for reviewing an ingredient's safety, and USDA/FSIS is responsible for evaluating its suitability. (MOU 225–00–2000; see also 65 FR 51758 at 51759, August 25, 2000). Suitability relates to the effectiveness of the ingredient in performing the intended purpose of use and the assurance that the conditions of use will not result in an adulterated product or one that misleads consumers. As we stated in the bacteriophage final rule, "FDA recognizes that there may be meat or poultry products considered RTE for which use of the additive may not be suitable within the meaning of those statutes. This regulation addresses only the safety standard under section 409 of the Federal Food, Drug, and Cosmetic Act and does not address requirements for suitability administered by the USDA." (71 FR 47729 at 47731). FSIS concurred with the issuance of FDA's final rule.

FDA is denying the request for a hearing on this point because a hearing will not be granted unless there is a genuine and substantial factual issue to be resolved (§ 12.24(b)(1)), and resolution of the factual issue in the way sought is adequate to justify the action requested (§ 12.24(b)(4)).

D. FWW's Assertion That Key Research Used to Support the Rule Has Not Been Published in Peer-Reviewed Journals

FWW asserts that key research submitted by the petitioner in support of their additive was not published in peer-reviewed journals, which they claim is required under § 170.31(i) (21 CFR 170.3(i)). Specifically, FWW is referring to the definition of safe or safety which is defined in § 170.3(i) as "* * * a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. * * *"

FWW has misinterpreted § 170.3(i). This regulation does not require that in order to establish safety, the research submitted by a petitioner in support of a food additive must be published in a peer-reviewed journal. This regulation states that "Safety may be determined by scientific procedures or by general recognition of safety." Importantly, scientific procedures are defined under § 170.3(h) as " * * * human, animal, analytical, and other scientific studies, whether published or unpublished, appropriate to establish the safety of a substance." Therefore, FDA does not require the key research submitted by a petitioner in support of a food additive be published in a peer-reviewed journal to establish safety. This objection does not raise a genuine and substantial issue of fact for resolution at a hearing. FDA is denying the request for a hearing on this point because a hearing will not be granted if there is no genuine and substantial factual issue to be resolved (§ 12.24(b)(1)).

E. FWW's Contention That FDA Did Not Adhere to Its Requirements on Making Information Publicly Available

FWW contends that the Agency did not follow the requirements in § 171.1(h) (21 CFR 171.1(h)) for making information publicly available. They cite § 171.1(h)(1), which states: "The following data and information in a food additive petition are available for public disclosure, unless extraordinary circumstances are shown, after the notice of filing of the petition is published in the Federal Register * * *." FWW states that FDA did not publicly disclose the releasable information from FAP 2A4738 after the notice of filing of the petition published in the **Federal Register** as required under § 171(h)(1). FWW also states "as of the submission of these objections, FDA has still not made much of this information, including much of this petition, available."

FWW misinterprets § 171.1(h)(1). That paragraph does not mean that the releasable data and information in a petition are publicly disclosed when the notice of filing publishes, but merely that the information in the petition is available for public disclosure. Before the information in a petition is actually disclosed, the Agency has to purge all data and information that are protected from disclosure. Because this is a labor intensive process, FDA does not preemptively disclose the information in a petition at this time, but rather releases it in response to requests made under the Freedom of Information Act (FOIA). To disclose the information in a petition before a request is received would not be an efficient use of Agency resources.

In the case of FAP 2A4738, the notice of filing was published in the **Federal Register** of July 22, 2002, at which time the releasable information in the petition was available for public disclosure through the Agency's FOIA process. The final rule for this petition published in the **Federal Register** of August 18, 2006, and the period for submitting objections to this rule ended on September 18, 2006. Prior to the beginning of the objection period, FDA had not processed any FOIA requests for this information. The petition therefore had not been previously redacted.

On September 7, 2006, arrangements were made for FWW to go to FDA's offices to review the petition, including specific sections in which the organization had expressed a particular interest. On September 8, 2006, FWW came to FDA's offices and reviewed releasable parts of the petition. At the end of their visit, FWW left with approximately 250 pages of documents. In addition, an FOIA request from Wenonah Hauter of FWW (dated August 31, 2006 and received and logged by FDA's Freedom of Information Staff on September 5, 2006) was processed, and the information sent to FWW on February 9, 2007.

The objection provides no evidence to support the contention that FDA did not follow § 171.1(h) regarding releasable information from FAP 2A4738. FDA is denying the request for a hearing on this point because a hearing will not be granted if there is no genuine and substantial factual issue to be resolved (§ 12.24(b)(1)).

F. FWW's Contention That FDA Did Not Provide Adequate and Timely Notice of the Standards Used To Evaluate the Petition

FWW contends that FDA did not provide timely notice of the standards it used for evaluating the petition and how the data justifies the Agency's conclusion. Specifically, FWW contends that FDA made available the memoranda referenced in the bacteriophage final rule and select portions of the petition only after much pleading on the 13th and 21st day, respectively, after the start of the statutorily required 30-day objection period.

On August 17, 2006, the date the bacteriophage final rule was placed on public display and 1 day before the rule published in the **Federal Register**, the four references cited in the final rule were also placed on public display in the petition docket. However, after realizing that some of the references contained confidential information, FDA immediately removed them from the docket to redact any confidential information. The redacted references were placed back in the docket on August 31, 2006.

The Agency was first contacted by FWW on August 18, 2006, about the unavailability of the four references listed in the bacteriophage final rule. FWW was informed that the review memos had been taken off the Agency's Web site to be purged of confidential information. While the 4 references cited in the bacteriophage final rule were unavailable to FWW for 13 days after the publication of the final rule, FWW did obtain them with more than half the 30-day period for objection still left.

With respect to the select portions of the petition that FWW objects to having received 21 days after the start of the 30-day objection period, we understand this objection to refer to the portions of the petition that FWW examined in FDA's offices on September 8, 2006. These portions of the petition were not among the four references cited in the bacteriophage final rule and placed on public display as part of the petition docket. As is discussed previously, it would not be an efficient use of Agency resources to prepare the entire petition for release in advance of any requests to view the petition. However, FDA was nonetheless able to redact significant portions of the petition in an expedited manner and provide them for FWW's review on September 8, 2006.

FDA is denying the request for a hearing on this point because a hearing will not be granted unless there is a genuine and substantial factual issue to be resolved (§ 12.24(b)(1)), and resolution of the factual issue in the way sought is adequate to justify the action requested (§ 12.24(b)(4)). Furthermore, a hearing is justified only if the objections "draw in question in a material way the underpinnings of the regulation at issue" (*Pactra Industries* v. *Consumer Product Safety Commission,* 555 F.2d at 684), which is not the case with this objection.

V. Summary and Conclusions

Section 409 of the FD&C Act requires that a food additive be shown to be safe prior to marketing. Under § 170.3(i), a food additive is "safe" if "* * * there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.* * *" In the final rule approving the use of a *Listeria*-specific bacteriophage preparation for treating RTE meat and poultry products, FDA concluded that the data presented by the petitioner to establish safety of the additive demonstrate that the use of the bacteriophage preparation is safe under the conditions of use stated in the regulation. The petitioner has the burden to demonstrate the safety of the additive in order to gain FDA approval. (*See, e.g., Silverman* v. *Foreman,* 631 F.2d 969, 972 (DC Cir. 1980).) Once FDA makes a finding of safety, the burden shifts to an objector, who must come forward with evidence that calls into question FDA's conclusion. (*See* section 409(f)(1) of the FD&C Act.)

None of the objections received contained evidence to present a genuine and substantial issue of fact. Nor has the objector established that the Agency overlooked significant information in reaching its conclusion. Therefore, the Agency has determined that the objections that requested a hearing do not raise any substantial issue of fact that would justify an evidentiary hearing (§ 12.24(b)). Accordingly, FDA is not making any changes in response

to the objections and is denying the requests for a hearing. In addition, FWW's request for a stay of the effectiveness of the August 18, 2006, regulation until a hearing is held is moot because FDA is denying the hearing request. FDA is confirming August 18, 2006, as the effective date of the regulation.

VI. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. "Evaluating the Safety of Food Chemicals," National Research Council, National Academy of Sciences, Washington DC, p. 55.

2. Jacobs, T., A. Darji, N. Frahm, et al., "Listeriolysin O: Cholesterol Inhibits Cytolysis But Not Binding to Cellular Membranes," *Molecular Microbiology,* 28:1081–1089, 1998.

3. U.S. Department of Agriculture Nutritive Value of Foods, Home and Garden Bulletin Number 72, USDA, Agricultural Research Service.

4. Guyton, A.C., J.E. Hall, *Textbook of Medical Physiology* (9th ed.) Philadelphia: W.B. Saunders Co., p. 817, 1996.

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6792 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

[Docket No. FDA–2011–N–0003]

Tolerances for Residues of New Animal Drugs in Food; 2-Acetylamino-5-Nitrothiazole; Buquinolate; Chlorobutanol; Estradiol and Related Esters; Ethylenediamine; Florfenicol; Flunixin; Furazolidone; Hydrocortisone; Methylparaben; Methylprednisolone; Prednisolone; Prednisone; Progesterone; Propylparaben; and Salicylic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the revocation of tolerances for residues of various substances in food because approval has been withdrawn for the underlying food additive petitions (FAPs) or new animal drug applications (NADAs). This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *e-mail: george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 512(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(i)) (21 CFR 514.105(a)) directs FDA to establish tolerances by regulation, as necessary, when a new animal drug is approved for use in food-producing animals. However, section 512(i) of the FD&C Act (21 CFR 514.115(e)) also obligates FDA to revoke such tolerance regulations upon the withdrawal of approval of the related NADA.

FDA has noticed that the animal drug regulations contain tolerances for residues of substances in food that were established by approval of FAPs for animal drug products prior to the Animal Drug Amendments of 1968 or by NADA for which an underlying application for use in a food-producing species is not currently approved. Following codification of the tolerance, the underlying FAP may have been withdrawn, or an NADA for the same drug product was not filed or was withdrawn, either voluntarily or for cause. When regulations for these products were removed or omitted from various redesignation rules, the appropriate conforming amendments to remove the revoked tolerances from part 556 (21 CFR part 556) were not made. The following chemical substances and new animal drugs have codified tolerances for which FDA finds no applications with corresponding approved conditions of use in food-producing animals:

1. *2-Acetylamino-5-nitrothiazole (§ 556.20).* In 1979, FDA acknowledged the voluntary withdrawal of approval of NADA 9–424 for use of 2-acetylamino-5-nitrothiazole for use in turkey feed and revoked 21 CFR 558.25 (44 FR 40888, July 13, 1979), but did not amend part 556 to remove the associated tolerances.

2. *Chlorobutanol (§ 556.140).* In 1963, FDA established a tolerance for chlorobutanol in milk of dairy animals at § 121.1131 (21 CFR 121.1131) incidental to the approval of an FAP for a combination drug, antibiotic/steroid intramammary infusion (28 FR 4948, May 17, 1963). Section 121.1131 was redesignated as 21 CFR 135g.31 (35 FR 15372 at 15376, October 2, 1970) and as § 556.140 (40 FR 13802 at 13947, March 27, 1975).

3. *Estradiol and progesterone in edible tissues of lambs (§§ 556.240 and 556.540).* In 1973, FDA acknowledged the voluntary withdrawal of approval of a subcutaneous implant for use in lambs containing estradiol benzoate and progesterone under NADA 9–442 (38 FR 7481, March 22, 1973). Subsequently, FDA removed the approved conditions of use in 21 CFR 522.1940 (44 FR 6707 at 6708, February 2, 1979), but did not amend part 556 to remove the associated tolerances in uncooked edible tissues of lambs.

4. *Ethylenediamine (§ 556.270).* In 1965, FDA established a tolerance for ethylenediamine in milk of dairy animals at § 121.1184 (21 CFR 121.1184) incidental to the approval of an FAP for a combination drug, antibiotic intramammary infusion (30 FR 11952 at 11954, September 18, 1965). Section 121.1184 was redesignated as 21 CFR 135g.48 (35 FR 15372 at 15378) and as § 556.270 (40 FR 13802 at 13950).

5. *Furazolidone (§ 556.290).* In 1963, FDA established a tolerance for furazolidone in uncooked edible tissues of swine at § 121.2582 (21 CFR 121.2582) incidental to the approval of an FAP for use in medicated swine feed (28 FR 12664 at 12665, November 28, 1963). Section 121.2582 was redesignated as 21 CFR 121.1145 (30 FR 15845 at 15917, December 23, 1965), as 21 CFR 135g.36 (35 FR 15372 at 15376), and as § 556.290 (40 FR 13802 at 13950). In 1971, FDA proposed to withdraw approval of NADAs for use of furazolidone in food-producing animals on grounds that the drug, when administered to laboratory animals, was shown to produce tumors (36 FR 5927, March 31, 1971) and in 1991 withdrew approval after a full evidentiary hearing (56 FR 41902, August 23, 1991). Currently, there is no approved application for use of furazolidone in a food-producing species. A 1996 order codified a prohibition of extralabel use of furazolidone in food-producing animals (61 FR 57732 at 57743, November 7, 1996 as amended 67 FR 5470 at 5471, February 6, 2002). *See* 21 CFR 530.41(a)(7).

6. *Hydrocortisone (§ 556.320).* In 1970, FDA established a tolerance for hydrocortisone in milk of dairy animals at § 135g.3 (21 CFR 135g.3) incidental to the approval of an FAP for a combination drug, antibiotic/steroid intramammary infusion (35 FR 12332 at 12333, August 1, 1970). Section 135g.3

was redesignated as § 556.320 (40 FR 13802 at 13950).

7. *Methylparaben (§ 556.390).* In 1964, FDA established a tolerance for methylparaben in milk of dairy animals at § 121.1158 (21 CFR 121.1158) incidental to the approval of an FAP for a combination drug, antibiotic intramammary infusion (29 FR 14624, October 27, 1964). Section 121.1158 was redesignated as 21 CFR 135g.41 (35 FR 15372 at 15376) and as § 556.390 (40 FR 13802 at 13956).

8. *Methylprednisolone (§ 556.400).* In 1970, FDA established a tolerance for methylprednisolone in milk of dairy animals at § 135g.67 (21 CFR 135g.67) incidental to the approval of an FAP for a combination drug, antibiotic/steroid intramammary infusion (35 FR 12332 at 12333). Section 135g.67 was redesignated as § 556.400 (40 FR 13802 at 13956).

9. *Prednisolone (§ 556.520).* In 1964, FDA established a tolerance for prednisolone in milk of dairy animals at § 121.1147 (21 CFR 121.1147) incidental to the approval of an FAP for a combination drug, antibiotic intramammary infusion (29 FR 3393, March 14, 1964). Section 121.1147 was redesignated as 21 CFR 135g.37 (35 FR 15372 at 15376) and as § 556.520 (40 FR 13802 at 13956).

10. *Prednisone (§ 556.530).* In 1964, FDA established a tolerance for prednisone in milk of dairy animals at § 121.1157 (21 CFR 121.1157) incidental to the approval of an FAP for a combination drug, antibiotic intramammary infusion (29 FR 14624). Section 121.1157 was redesignated as 21 CFR 135g.40 (35 FR 15372 at 15376) and as § 556.530 (40 FR 13802 at 13956).

11. *Propylparaben (§ 556.550).* In 1964, FDA established a tolerance for propylparaben in milk of dairy animals at § 121.1159 incidental to the approval of an FAP for a combination drug, antibiotic intramammary infusion (29 FR 14624). Section 121.1159 was redesignated as 21 CFR 135g.42 (35 FR 15372 at 15376) and as § 556.550 (40 FR 13802 at 13956).

12. *Salicylic acid (§ 556.590).* In 2005, FDA acknowledged the voluntary withdrawal of approval of salicylic acid for use in cattle under NADA 010–481 and revoked 21 CFR 529.2090 (70 FR 50181, August 26, 2005), but did not remove the associated tolerance.

At this time, FDA is revoking the tolerances for 2-acetylamino-5-nitrothiazole, buquinolate, chlorobutanol, estradiol in lamb, ethylenediamine, furazolidone, hydrocortisone, methylparaben, methylprednisolone, prednisolone, prednisone, progesterone in lamb, propylparaben, and salicylic acid. Accordingly, §§ 556.20, 556.140, 556.270, 556.290, 556.320, 556.390, 556.400, 556.520, 556.530, 556.550, and 556.590 are being removed, and §§ 556.240 and 556.540 are being amended to reflect the revoked tolerances.

Also, FDA is amending the animal drug regulations in §§ 556.283 and 556.286 to cross reference an approved combination drug injectable solution containing florfenicol and flunixin (75 FR 1274, January 11, 2010). FDA is further amending § 556.286 to reflect the marker residue in milk for residues of flunixin meglumine. This action is being taken to comply with section. 512(i) of the FD&C Act and to improve the accuracy of the regulations.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.20 [Removed]

■ 2. Remove § 556.20.

§ 556.140 [Removed]

■ 3. Remove § 556.140.

§ 556.240 [Amended]

■ 4. In § 556.240, remove and reserve paragraph (b).

§ 556.270 [Removed]

■ 5. Remove § 556.270.

■ 6. Revise § 556.283 to read as follows:

§ 556.283 Florfenicol.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of florfenicol is 10 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue).* The tolerance for florfenicol amine (the marker residue) is 3.7 parts per million (ppm).

(ii) *Muscle.* The tolerance for florfenicol amine (the marker residue) is 0.3 ppm.

(2) *Swine*—(i) *Liver (the target tissue).* The tolerance for parent florfenicol (the marker residue) is 2.5 ppm.

(ii) *Muscle.* The tolerance for parent florfenicol (the marker residue) is 0.2 ppm.

(3) *Catfish.* The tolerance for florfenicol amine (the marker residue) in muscle (the target tissue) is 1 ppm.

(4) *Salmonids.* The tolerance for florfenicol amine (the marker residue) in muscle/skin (the target tissues) is 1 ppm.

(c) *Related conditions of use.* See §§ 520.955, 522.955, 522.956, and 558.261 of this chapter.

■ 7. In § 556.286, revise paragraphs (b)(1)(iii) and (c) to read as follows:

§ 556.286 Flunixin.

* * * * *

(b) * * *

(1) * * *

(iii) *Milk:* 2 ppb 5-hydroxy flunixin.

* * * * *

(c) *Related conditions of use.* See §§ 522.956 and 522.970 of this chapter.

§ 556.290 [Removed]

■ 8. Remove § 556.290.

§ 556.320 [Removed]

■ 9. Remove § 556.320.

§ 556.390 [Removed]

■ 10. Remove § 556.390.

§ 556.400 [Removed]

■ 11. Remove § 556.400.

§ 556.520 [Removed]

■ 12. Remove § 556.520.

§ 556.530 [Removed]

■ 13. Remove § 556.530.

§ 556.540 [Amended]

■ 14. In § 556.540, remove and reserve paragraph (b).

§ 556.550 [Removed]

■ 15. Remove § 556.550.

§ 556.590 [Removed]

■ 16. Remove § 556.590.

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6796 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2011–N–0026]

Medical Devices; Immunology and Microbiology Devices; Classification of Ovarian Adnexal Mass Assessment Score Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the ovarian adnexal mass assessment score test system into class II (special controls). The special control that will apply to these devices is the guidance document entitled "Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System." The Agency is classifying these devices into class II (special controls) because special controls, in addition to general controls, will provide a reasonable assurance of safety and effectiveness of these devices and there is sufficient information to establish special controls. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for these devices.

DATES: *Effective Date:* April 22, 2011. The classification was effective September 11, 2009.

FOR FURTHER INFORMATION CONTACT: Donna Roscoe, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5540, Silver Spring, MD 20993–0002, 301–796–6183.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act (the FDAMA) (Pub. L. 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

FDA refers to devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as postamendments devices. Postamendments devices are classified automatically by statute (section 513(f) of the FD&C Act into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or class II in accordance with section 513(f)(2) of the FD&C Act; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i), to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A person may market a preamendments device that has been classified into class III through premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the FD&C Act, formerly section 513(f)(2). This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the FD&C Act, or the manufacturer or importer of a device may petition the Secretary for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDAMA added section 513(f)(2) to the FD&C Act which addresses classification of postamendments devices. Section 513(f)(2) of the FD&C Act provides that, upon receipt of a "not substantially equivalent" determination, a 510(k) applicant may request FDA to classify a postamendments device into class I or class II. Within 60 days from the date of such a written request, FDA must classify the device by written order. If FDA classifies the device into class I or II, the applicant has then received clearance to market the device and it can be used as a predicate device for other 510(k)s. It is expected that this process will be used for low risk devices. This process does not apply to devices that have been classified by regulation into class III—i.e., preamendments class III devices, or class III devices for which a PMA is appropriate.

II. Classification

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on July 16, 2009, classifying the Vermillion, Inc. OVA1™ Test into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On July 22, 2009, Vermillion, Inc., submitted a petition requesting classification of the OVA1™ Test under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, the FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name ovarian adnexal mass assessment score test system, and it is identified as a device that measures one or more proteins in serum or plasma. It yields a single result for the likelihood that an adnexal pelvic mass in a woman, for whom surgery is planned, is malignant. The test is for adjunctive use, in the context of a negative primary clinical and radiological evaluation, to augment the identification of patients whose gynecologic surgery requires oncology expertise and resources.

III. Risks to Health

FDA has identified the risks to health associated with this type of device as a false negative result, a false positive result, and off-label use as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery. Failure of the system to perform as indicated could lead to inaccurate risk assessment and improper management of patients with ovarian malignancies. Specifically, a falsely low ovarian adnexal mass score could result in a determination that the patient may not have ovarian malignancy, which could lead to less than optimal surgical expertise and resources. A falsely high ovarian adnexal mass score could result in a determination that the patient may have ovarian malignancy which could lead to inappropriate surgical decisions and unnecessary patient anxiety. Off-label use of the test, including use of test results as a stand-alone diagnostic without consideration of other diagnostic testing and clinical assessment, could also pose a risk for morbidity and mortality due to non-referral for oncologic evaluation and treatment.

FDA believes that the special controls guidance document, in addition to general controls, addresses the risks to health identified above and provides reasonable assurance of the safety and effectiveness of the device. Therefore, on September 11, 2009, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this device by adding § 866.6050.

IV. 510(k) Premarket Notification

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for ovarian adnexal mass assessment score test system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined because of the risks of false positives and negatives and off label use that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, this type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the ovarian adnexal mass assessment score test system they intend to market.

V. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule is deregulatory and imposes no new burdens, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Background

An ovarian adnexal mass assessment test system is a device that measures one or more proteins in serum or plasma to yield a single result for the likelihood that an adnexal pelvic mass in a woman for whom surgery is planned is malignant. Such a test would identify women who would benefit from referral to a gynecological oncologist, despite negative results from other clinical and radiographic tests for ovarian cancer.

The ovarian adnexal mass assessment test system device is currently classified into class III, the highest level of regulatory oversight. The device was initially placed in this classification automatically because there was no predicate device to which it could be found substantially equivalent. Manufacturers of ovarian adnexal mass assessment test systems, as makers of class III devices, bear all costs associated with premarket approval, including the cost of submitting the premarket approval application (PMA) and payment of user fees. The costs associated with the submission of the PMA are substantial, potentially reaching $1,000,000.

We are aware of a single manufacturer producing a single product affected by this device classification. The manufacturer submitted a request for Evaluation of Automatic Class III Designation, recommending classification into class II. Placing this device in a classification with less burdensome regulatory requirements affects the current manufacturer and potentially affects others, encouraging future entry into this market.

In response to the manufacturer request, FDA is classifying ovarian adnexal mass assessment test system devices into class II. Based on the experience of FDA reviewers, the Agency concludes that the ovarian adnexal mass assessment test system device would not be safe and effective under general controls. FDA has therefore chosen special controls to address the specific risks of false positives, false negatives, and off-label use. These special controls in addition to the application of general controls would be consistent with the principle of applying the least degree of regulatory control necessary to provide reasonable assurance of safety and effectiveness. The application of this intermediate level of regulatory oversight would be consistent with the treatment of other devices with similar risk profiles.

The special controls recommend a black box warning to reduce the risks of off-label use. The Agency is separately

proposing to require the application of the black box warning to labeling and advertising through notice and comment rulemaking. For the purposes of this analysis, we assume that this final rule will establish special controls with a reference to a black box warning regarding off-label use, but the analysis of the impact of the addition of the warning to the product label will be included in a separate rulemaking.

B. Costs of the Final Rule

This final rule is deregulatory. Device manufacturers currently subject to class III requirements will be subject to the less burdensome requirements for makers of class II devices. Through this classification, manufacturers of ovarian adnexal mass assessment test system devices will be relieved of the obligation to submit a PMA prior to marketing. The cost of submitting a PMA can reach $1,000,000, plus user fees of an additional $217,787 in FY 2010, increasing to $256,384 in 2012. This device classification will substantially reduce an existing burden on manufacturers of ovarian adnexal mass assessment test system devices. Considering the cost of submitting a PMA plus the relevant user fees, the reduction could be $1,000,000 per device.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of the affected device into class II after it had automatically been placed in class III will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the FD&C Act. Because of the reduced burden, the Agency does not believe that this final rule will have a significant economic impact on a substantial number of small entities.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires Agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain state requirements "different or in addition to" certain federal requirements applicable to devices. 21 U.S.C. 360k; *See Medtronic* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008). The special controls established by this rulemaking create "requirements" to address each identified risk to health presented by these specific medical devices under 21 U.S.C. 360k, even though product sponsors may have flexibility in how they meet those requirements. Cf. *Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–42 (9th Cir. 1997).

VIII. Paperwork Reduction Act of 1995

This final rule establishes as special controls a guidance document that refers to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled "Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System." The notice contains an analysis of the paperwork burden for the guidance.

IX. References

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Vermillion, Inc., for reclassification of the OVA1™ Test submitted July 22, 2009.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 866.6050 is added to subpart G to read as follows:

§ 866.6050 Ovarian adnexal mass assessment score test system.

(a) *Identification.* An ovarian/adnexal mass assessment test system is a device that measures one or more proteins in serum or plasma. It yields a single result for the likelihood that an adnexal pelvic mass in a woman, for whom surgery is planned, is malignant. The test is for adjunctive use, in the context of a negative primary clinical and radiological evaluation, to augment the identification of patients whose gynecologic surgery requires oncology expertise and resources.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System." For the availability of this guidance document, *see* § 866.1(e).

Dated: March 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6620 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0100]

RIN 1625–AA09

Drawbridge Operation Regulation; Buffalo Bayou, Mile 4.3, Houston, Harris County, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the drawbridge across Buffalo Bayou, mile 4.3, Houston, Harris County, Texas. The bridge was replaced with a fixed bridge in 1991 and the operating regulation is no longer applicable or necessary.

DATES: This rule is effective March 23, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0100 and are available by going to *http://www.regulations.gov,* inserting USCG–2011–0100 in the "Keyword" box, and then clicking "Search." This material is 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. Jim Wetherington, Bridge Specialist, Coast Guard; telephone 504–671–2128, e-mail *james.r.wetherington@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the drawbridge requiring draw operations in 33 CFR 117.955(b), was removed and replaced with a fixed span bridge in 1991. The bridge operator and those transiting in the vicinity of this bridge have not been governed by the draw operations since the bridge was removed and replaced. Therefore, the regulation is no longer applicable and should be removed from publication.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the draw operations requirements under 33 CFR 117.955(b), thus removing a regulatory restriction on the public. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been a fixed bridge for 20 years and this rule only requires an administrative change to the **Federal Register**, omitting a regulatory requirement that is no longer applicable or necessary.

Basis and Purpose

The drawbridge across Buffalo Bayou, mile 4.3, was removed and replaced with a fixed bridge in 1991. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation pertaining to this drawbridge.

The regulation governing the operation of the bridge is found in 33 CFR 117.955(b). The purpose of this rule is to remove the section of 33 CFR 117.955 (b) that refers to the bridge at mile 4.3, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117 by removing restrictions and the regulatory burden related to the draw operations for this bridge that is no longer in existence without publishing an NPRM. The change removes the section of the regulation governing the bridge since the bridge has been replaced with a fixed bridge. This change does not affect vessel operators using the waterway. Thus, it is not necessary to publish an NPRM.

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 does not consider this rule to be "significant" under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

Since the drawbridge across the Buffalo Bayou, mile 4.3 at Houston, Texas, has been removed and replaced with a fixed bridge, the regulation governing draw operations for this bridge is no longer needed. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that 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 (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.955 (b) to read as follows:

§ 117.955 Buffalo Bayou.

* * * * *

(b) The draw of the Union Pacific Rail Road Bridge, mile 3.1, need not be opened to the passage of vessels.

Dated: March 10, 2011.

Mary E. Landry,

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

[FR Doc. 2011–6876 Filed 3–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0113]

Drawbridge Operation Regulation; Pocomoke River, Snow Hill, MD

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 S12 Bridge across Pocomoke River, mile 29.9, at Snow Hill, MD. The deviation restricts the operation of the draw span to facilitate the cleaning and painting of the bridge.

DATES: This deviation is effective from 7 a.m. on March 15, 2011 through 11:59 p.m. on May 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0113 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0113 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. Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District; telephone 757–398–6222, e-mail *Waverly.W.Gregory@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 Maryland State Highway Administration (SHA), who owns and operates this single leaf bascule drawbridge, has requested a temporary deviation from the current operating schedule to facilitate the cleaning and painting of the structure. Under the regular operating schedule, the bridge opens on signal as required by 33 CFR 117.569(c) if at least five hours advance notice is given.

The S12 Bridge across Pocomoke River, mile 29.9 at Snow Hill MD, has a vertical clearance in the closed position of two feet above mean high water and five feet above mean low water. Under this temporary deviation, the contractor has requested to maintain the bridge in the closed position to vessels from 7 a.m. on March 15, 2011 through 11:59 p.m. on May 30, 2011, to allow for the potential delays caused by anticipated seasonal weather patterns that will interfere with environmental conditions required for sandblasting and painting of the bridge.

Bridge opening data supplied by SHA and reviewed by the Coast Guard revealed vessel openings of the draw span from March 2010 through May 2010. Specifically, the drawbridge opened for vessels a total of 23, 13, and 25 times during the months of March 2010 through May 2010, respectively. We also contacted a nearby canoe shop owner who indicated that he can work around the restrictions.

The Coast Guard has coordinated the restrictions with the local users of the waterway and will inform other users 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. There are no alternate routes for vessels transiting this section of the Pocomoke River and the drawbridge will be able to open in the event of an emergency.

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: February 18, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–6879 Filed 3–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0121]

Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Commodore Schuyler F. Heim Drawbridge across Cerritos Channel, mile 4.9, at Long Beach, CA. The deviation is necessary to allow the California Department of Transportation to perform critical repair and replacement of electrical components for drawspan operation.

DATES: This deviation is effective from 7 a.m. to 7 p.m. on March 26, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–0121 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0121 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@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 California Department of Transportation requested a temporary change to the operation of the Commodore Schuyler F. Heim Drawbridge, mile 4.9, over Cerritos Channel, at Long Beach, CA. The drawbridge navigation span provides a vertical clearance of 37 feet above Mean High Water in the closed-to-navigation position and 163 feet in the full open to navigation position. As required by 33 CFR 117.147, the draw shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. Navigation on the waterway is commercial, recreational, search and rescue, and law enforcement.

The drawspan will be secured in the closed-to-navigation position from 7 a.m. through 7 p.m. on March 26, 2011 to perform critical repair and replacement of electrical components for drawspan operation. The alternative path around Terminal Island will be available for routine and emergency navigation. This temporary deviation has been coordinated with commercial and recreational waterway users. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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 9, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–6880 Filed 3–22–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0101; FRL–8868–7]

Aspergillus flavus AF36; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial pesticide, *Aspergillus flavus* AF36, in or on corn food and feed commodities, when applied/used as an antifungal agent. The Arizona Cotton Research and Protection Council submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to the existing exemption from the requirement of a tolerance for *Aspergillus flavus* AF36. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36 under the FFDCA.

DATES: This regulation is effective March 23, 2011. Objections and requests for hearings must be received on or before May 23, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see* also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0101. 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 Office of Pesticide Programs (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: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(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–2010–0101 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 23, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0101, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* 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 March 3, 2010 (75 FR 9596) (FRL–8811–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9E7662) by the Arizona Cotton Research and Protection Council, 3721 East Wier Ave., Phoenix, AZ 85040–2933. The petition requested that 40 CFR 180.1206 be amended by establishing an exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36 in or on corn food and feed commodities. This notice referenced a summary of the petition prepared on behalf of the petitioner, Arizona Cotton Research and Protection Council, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments 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 EPA 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.

The nature and toxicological profile of *Aspergillus flavus* AF36 was previously described in the **Federal Register** of July 14, 2003 (68 FR 41541) (FRL–7311–6). Those health effects data were the basis for establishing the tolerance exemption for *Aspergillus flavus* AF36, a non-aflatoxin-producing strain of *Aspergillus flavus,* in or on cotton and its food/feed commodities in 40 CFR 180.1206 and also for temporary tolerance exemptions for experimental use of *Aspergillus flavus* AF36 on pistachio (72 FR 28871, May 23, 2007) (FRL–8129–4) and on corn (72 FR 72965, Dec. 26, 2007) (FRL–8342–1). EPA has reviewed the available data in support of this action.

Aspergillus flavus AF36 is neither toxic nor infective via the oral and pulmonary routes. It was placed in Toxicity Category IV for acute oral effects. The Toxicity Category III designation for acute inhalation effects is based on the granular nature of the pesticide and the submitted pulmonary studies. This microbial pesticide has been used for more than a decade in experimental laboratory and field trials and in agricultural practice on cotton in Arizona, California, and Texas without any reports of adverse dermal irritation or hypersensitivity effects. Data and information from the public literature

indicate that there will not be any incremental harm from the use of *Aspergillus flavus* AF36 for reduction of aflatoxin. No further toxicological data are required to support this exemption from the requirement of a tolerance for *Aspergillus flavus* AF36 in or on the food and feed commodities of corn.

IV. Aggregate Exposure

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).

A. Dietary Exposure

1. *Food.* Current uses of *Aspergillus flavus* AF36 include use on cotton, pistachios, and corn. EPA does not expect these uses to result in any exposure that is greater than background levels of *Aspergillus flavus.* As a microbial pesticide for use on corn, *Aspergillus flavus* AF36 is labeled for application from the V7 growth stage (i.e., approximately 21–25 days after plant emergence) until silking (*i.e.,* approximately 55–66 days after plant emergence). Once applied to corn and after exposure to moisture, *Aspergillus flavus* AF36 germinates, using the carrier upon which it is placed as a nutrient source, and effectively displaces aflatoxin-producing strains of *Aspergillus flavus* without increasing levels of cyclopiazonic acid (Ref. 1). Further, multiple-year studies, which monitored air and soil populations of *Aspergillus flavus,* including strain AF36, in cotton fields, demonstrated replacement of toxigenic (aflatoxin-producing) fungi with atoxic fungi without an increase in the overall quantity of *Aspergillus flavus* beyond normal background levels (Refs. 2 and 3). Although residues from the use of pesticides containing *Aspergillus flavus* AF36 will likely be present on corn at the time of harvest (although likely not at higher levels than background), much like other microbial pest control agents, commodity-processing procedures (*e.g.,* peeling, shucking, washing, and cooking) should further reduce levels of *Aspergillus flavus* AF36 below typical background levels (Ref. 4). Finally, even with the potential for negligible exposure to *Aspergillus flavus* AF36 on edible corn commodities, a previously reviewed and described acute oral toxicity and pathogenicity study (*see* Unit III. of the **Federal Register** of July 14, 2003 (68 FR 41541) (FRL–7311–6)) showed no toxicity or infectivity in animals exposed to high levels of this active ingredient.

2. *Drinking water exposure.* Exposure to *Aspergillus flavus* AF36 via drinking water from all uses of *Aspergillus flavus* AF36 is not likely to be greater than current/existing exposures to *Aspergillus flavus* strains, which are already present in the environment. Potential risks via exposure to drinking water or runoff may be mitigated by, among other things, percolation through soil. Thus, EPA expects exposure via drinking water from the proposed use of this non-aflatoxin-producing strain of *Aspergillus flavus* to be low, or at least not greater than existing background levels. In any event, any drinking water exposure is not likely to pose any incremental risk to adult humans, infants and children because of the lack of toxicity or infectivity of this substance. In fact, displacement of the toxigenic strains of *Aspergillus flavus* by AF36 may decrease exposure and risk to the toxigenic strains of *Aspergillus flavus* in the environment.

B. Other Non-Occupational Exposure

Dermal and inhalation non-occupational exposure are expected to be minimal to non-existent for the proposed use of *Aspergillus flavus* AF36 in or on corn. *Aspergillus flavus* AF36 is to be applied to agricultural sites not in the proximity of residential areas, schools, nursing homes, or daycares. Additionally, the *Aspergillus* flavus AF36 product to be applied to corn is in a granular form, thereby minimizing spray drift even for application methods (e.g., aerial) that may be more likely to result in pesticide movement offsite.

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, EPA consider "available information concerning the cumulative effects of [a particular pesticide's] residues and other substances that have a common mechanism of toxicity."

EPA has not found *Aspergillus flavus* AF36 to share a common mechanism of toxicity with any other substances, and *Aspergillus flavus* AF36 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that *Aspergillus flavus* AF36 does not have a common mechanism of toxicity with other substances. Following from this, therefore, EPA concludes that there are no cumulative effects associated with *Aspergillus flavus* AF36 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 U.S. Population, Infants and Children

There is reasonable certainty that no harm will result from aggregate exposures to residues of *Aspergillus flavus* AF36, in its use as an antifungal agent, to the U. S. population, including infants and children. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there appears to be no potential for harm from this fungus in its use as an antifungal agent via dietary exposure since the organism is non-toxic and non-pathogenic to animals and humans. EPA has arrived at this conclusion based on the very low levels of mammalian toxicity for acute oral and pulmonary effects with no toxicity or infectivity at the doses tested (*See* Unit III. above).

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (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 exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, EPA concludes that the fungus, *Aspergillus flavus* AF36, is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children and adults when *Aspergillus flavus* AF36 is used as labeled, the provision requiring an additional margin of safety does not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *Aspergillus flavus* AF36.

VII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with

international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. 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 *Aspergillus flavus* AF36.

C. Response to Comments

In total, four comments were received in response to the **Federal Register** notice published by EPA to announce receipt of the Arizona Cotton Research and Protection Council's petition. Three comments expressed support for the petition, while the other comment was filed in opposition.

The one substantive, negative comment indicated overall support for *Aspergillus flavus* NRRL 21882, another microbial pesticide intended for aflatoxin reduction. Primarily, this commenter articulated concern about the possible expression of cyclopiazonic acid (CPA) by the *Aspergillus flavus* 36 atoxigenic strain. That is, the commenter asserted that, while reduction of aflatoxin is an admirable goal, the substitution of one mycotoxin, aflatoxin, for another, CPA (albeit a less toxic one), was not acceptable. The commenter claimed that CPA could only be observed in field trials and was not directly observed by analysis of the active ingredient.

Field trial data presented by the petitioner to EPA demonstrated that there was no increase in CPA levels above background in treated corn. In addition, the use of *Aspergillus flavus* AF36 reduced aflatoxin levels in the treated fields compared to untreated plots. Given this new information (See Ref. 1), as well as previously reviewed data on *Aspergillus flavus* AF36, EPA has concluded 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 *Aspergillus flavus* AF36 in or on the food and feed commodities of corn, when applied/used as an antifungal agent. Thus, under the standard in FFDCA section 408(c)(2), a tolerance exemption is appropriate.

VIII. Conclusions

EPA 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 *Aspergillus flavus* AF36. Therefore, an exemption is established for residues of *Aspergillus flavus* AF36 in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover, when applied/used as an antifungal agent.

IX. References

1. U.S. EPA. 2011. *Aspergillus flavus* AF36 Use on Corn. Memorandum from J.V. Gagliardi, PhD and J.L. Kough, PhD to S. Bacchus dated February 24, 2011 (available as "Supporting & Related Materials" within docket ID number EPA–HQ–OPP–2010–0101 at *http://www.regulations.gov.*).
2. U.S. EPA. 2003. Environmental Hazard Assessment for the Microbial Pesticide, *Aspergillus flavus* AF36 for Conditional Registration in Arizona and EUP Extension in Texas. Memorandum from G.S. Tomimatsu, PhD and Z. Vaituzis, PhD to S. Bacchus dated May 16, 2003.
3. U.S. EPA. 2003. BPPD Review of Soil and Air Monitoring Studies and Product Performance Testing (Efficacy) Submitted by USDA Southern Regional Research Center/IR–4 as a Condition of Registration and EUP Extension (Texas) for *Aspergillus flavus* AF36. Memorandum from G.S. Tomimatsu, PhD and J. Kough, PhD to S. Bacchus dated May 15, 2003.
4. U.S. EPA. 1996. Microbial Pesticide Test Guidelines—Background for Residue Analysis of Microbial Pest Control Agents (OPPTS 885.2000). Available from: *http://www.epa.gov/ocspp/pubs/frs/publications/Test_Guidelines/series885.htm.*

X. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance 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, EPA 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, EPA 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 EPA 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 180

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

Dated: March 11, 2011.

Keith A. Matthews,

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

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.1206, paragraph (c) is revised to read as follows:

§ 180.1206 *Aspergillus flavus* AF36; exemption from the requirement of a tolerance.

* * * * *

(c) An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* AF36 in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover, when applied/used as an antifungal agent.

[FR Doc. 2011–6545 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0099; FRL–8863–8]

Flubendiamide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes, modifies and/or revokes tolerances for residues of flubendiamide N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on multiple food and livestock commodities which are identified, and will be discussed in detail later in this document. Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.) requested these tolerances, and revisions to tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 23, 2011. Objections and requests for hearings must be received on or before May 23, 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–2007–0099. 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: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; *telephone number:* (703) 306–0327; *fax number:* (703) 308–0029; *e-mail address: rodia.carmen@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 those engaged in the following activities:

- 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 to provide 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 EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

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

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0099 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 23, 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–2007–0099, 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. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 8, 2010 (75 FR 32464 and 32465) (FRL–8827–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7685) by Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.), P.O. Box 12014, Research Triangle Park, NC 27709–2014. The petition requested that 40 CFR 180.639 be amended by establishing and/or amending tolerances for residues of flubendiamide N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide in or on artichoke, globe, flower head at 1.6 parts per million (ppm); hog, fat at 0.15 ppm; hog, kidney at 0.06 ppm; hog, liver at 0.06 ppm; hog, muscle at 0.02 ppm; low growing berry subgroup (crop sub-group 13–07G), except cranberry at 1.5 ppm; peanut, hay at 60 ppm; peanut, meal at 0.032 ppm; peanut, nutmeat at 0.02 ppm; peanut, refined oil at 0.04 ppm; pistachio at 0.06 ppm; safflower, seed at 4.5 ppm; small fruit vine climbing subgroup except fuzzy kiwifruit (crop sub-group 13–07F) at 1.4 ppm; sorghum, grain, forage at 13 ppm; sorghum, grain, grain at 5.0 ppm; sorghum, grain, stover at 18 ppm; sugarcane, cane at 0.30 ppm; sunflower, seed at 4.5 ppm; and turnip, greens at 25 ppm and by revising existing tolerances for residues of flubendiamide in or on alfalfa, forage from 0.15 ppm (rotational crop) to 25 ppm; alfalfa, hay from 0.04 ppm (rotational crop) to 65 ppm; brassica, head and stem subgroup 5A from 0.60 ppm to 4.0 ppm; brassica, leafy greens subgroup 5B from 5.0 ppm to 25 ppm; cattle, fat from 0.60 ppm to 0.8 ppm; cattle, kidney from 0.60 ppm to 0.4 ppm; cattle, liver from 0.60 ppm to 0.4 ppm; cattle, muscle from 0.07 ppm to 0.1 ppm; eggs from 0.03 ppm to 0.7 ppm; goat, fat from 0.60 ppm to 0.8 ppm; goat, kidney from 0.60 ppm to 0.4 ppm; goat, liver from 0.60 ppm to 0.4 ppm; goat, muscle from 0.07 ppm to 0.1 ppm; grain, aspirated fractions from 103 ppm to 215 ppm; horse, fat from 0.60 ppm to 0.8 ppm; horse, kidney from 0.60 ppm to 0.4 ppm; horse, liver from 0.60 ppm to 0.4 ppm; horse, muscle from 0.07 ppm to 0.1 ppm; milk, fat from 0.80 ppm to 1.0 ppm; poultry, fat from 0.15 ppm to 3.0 ppm; poultry, liver from 0.03 ppm to 0.8 ppm; poultry, muscle from 0.01 ppm to 0.1 ppm; sheep, fat from 0.60 ppm to 0.8 ppm; sheep, kidney from 0.60 ppm to 0.4 ppm; sheep, liver from 0.60 ppm to 0.4 ppm; and sheep, muscle from 0.07 ppm to 0.1 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.), the registrant, which is available in the docket at *http://www.regulations.gov.* There were no substantive comments received in response to the notice of filing.

Based upon review of the data supporting the referenced petition, EPA has revised the numerical level for several of the petitioned-for tolerances for flubendiamide, and is also revoking several now superseded tolerances. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The first human health risk assessment for flubendiamide (April 3, 2008) was conducted for uses on corn, cotton, tobacco, tree fruit, tree nuts, vine crops, and vegetable crops. Since that time, no new toxicology data has been submitted to the Agency. The following summary represents all the salient features regarding hazard characterization and endpoint selection for flubendiamide.

Flubendiamide has a low acute toxicity via the oral, dermal and inhalation routes of exposure. Though it is a slight irritant to the eye, flubendiamide is not a skin irritant and it is not a skin sensitizer under the conditions of the guinea pig maximization test.

In the mammalian toxicology database, the primary target organ of flubendiamide exposure is the liver, with secondary effects reported in the thyroid and kidney at equivalent or higher doses; no-observed-adverse-effect-levels (NOAELs) established to protect for liver toxicity are protective of effects seen in the thyroid and kidney. Adverse adrenal effects were also noted in the dog.

Buphthalmia (eye enlargement), opacity, and exophthalmus with hemorrhage appearing only in infancy, were observed in rat offspring in the reproductive and developmental neurotoxicity (DNT) studies. There was no clear dose-response relationship for this effect but ocular toxicity was noted in three rat studies and accompanied by histopathological findings of synechia, hemorrhage, keratitis, iritis, and cataracts. Therefore, bupthalmos is considered an effect of treatment. No evidence of cancer was seen for flubendiamide in cancer bioassays in mice and rats. Flubendiamide was also negative in mutagenicity testing.

Accordingly, flubendiamide was classified as "Not Likely To Be Carcinogenic to Humans."

More detailed information on the studies received and the nature of the adverse effects caused by flubendiamide as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the document entitled, "Flubendiamide: Human Health Risk Assessment for Proposed Uses on Corn, Cotton, Tobacco, Tree Fruit, Tree Nuts, Vine crops and Vegetable Crops," dated April 3, 2008, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2007–0099. Double-click on the document to view the referenced information on pages 65–70 of 105.

B. Toxicological Points of Departure/Levels of Concern

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

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

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUBENDIAMIDE FOR USE IN HUMAN HEALTH RISK ASSESSMENTS

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (Females, 13–49 years of age).	NOAEL = 99.5 milligrams/kilograms/day (mg/kg/day). UF_A = 10x UF_H = 10x FQPA SF = 1x	aRfD = 0.995 mg/kg/day. aPAD = 0.995 mg/kg/day.	2-generation reproduction, 1-generation reproduction, and DNT studies as three co-critical studies (using 1,200 ppm 99.5 mg/kg/day from the DNT as the highest NOAEL for eye effects, and a LOAEL from the 1-generation reproduction study of 127 mg/kg/day), based on buphthalmia (enlargement of eyes), ocular opacity, retinal degeneration, hemorrhage, cataract, and atrophy of the optic nerve.
Acute Dietary (General Population, including infants and children).	.		
Chronic Dietary (General Population, including infants and children).	NOAEL= 2.4 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = 0.024 mg/kg/day. cPAD = 0.024 mg/kg/day.	2-year rat cancer study, 1-year chronic dog study, and 1-year chronic rat study as three co-critical studies, using the chronic rat study NOAEL of 50 ppm (2.4 mg/kg/day) with LOAEL from the 2-year cancer rat study of 33.9 mg/kg/day, based on liver toxicity, fatty change, hypertrophy, ↑liver weight, and ↑ Gamma Glutamyl Transferase (GGT).
Cancer (oral, dermal, and inhalation).	Classification: Not likely to be carcinogenic to humans based on negative genotoxicity and carcinogenicity in long term cancer studies in rats and mice.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor.

A summary of the toxicological endpoints for flubendiamide used for human risk assessment can be found in the document entitled, "Flubendiamide: Human Health Risk Assessment for Proposed Uses on Corn, Cotton, Tobacco, Tree fruit, Tree nuts, Vine crops and Vegetable crops," dated April 3, 2008, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2007–0099. Double-click on the document to view the referenced information on pages 37–38 of 105.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flubendiamide, EPA considered exposure under the petitioned-for tolerances as well as all existing flubendiamide tolerances in 40 CFR 180.639. Acute and chronic dietary (food and drinking water) exposure assessments were conducted using the Dietary Exposure Evaluation Model, Version 2.03—Food Commodity Intake Database (DEEM–FCID™) which uses food consumption information from the United States Department of Agriculture's (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). EPA assessed dietary exposures from flubendiamide in food for the proposed new uses as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments

are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for flubendiamide. In estimating acute dietary exposure, EPA used DEEM–FCID™ along with food consumption information from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, for the acute assessment, the modeled exposure estimates are based on tolerance level residues, assuming 100% of crops were treated. In addition, experimental processing (where available) factors were assumed for both registered and requested crop uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used DEEM–FCID™ along with the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed a subset of the currently registered crops contain residues at the average residue levels found in the crop field trials. For the newly proposed crops, livestock commodities, and the remaining currently registered crops, EPA assumed tolerance level residues. In addition, experimental processing factors were used where available. Finally, EPA assumed 100% of crops were treated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flubendiamide should be classified as "Not Likely To Be Carcinogenic to Humans." As a result, a cancer dietary exposure assessment for the purpose of assessing cancer risk is unnecessary for flubendiamide, and was not conducted.

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

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

Flubendiamide is persistent and potentially mobile in terrestrial and aquatic environments. These fate properties suggest that it has a potential to move into surface water and ground water. The Agency has completed a drinking water assessment for flubendiamide using screening level water exposure models that were based on the existing and proposed uses. For the 1-in-10-year peak, the highest Tier 2 Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) Estimated Drinking Water Concentrations (EDWC) for flubendiamide was 24.57 parts per billion (ppb), based on application to corn. For the 1-in-10-year annual average, the highest PRZM/EXAMS EDWC was 11.46 ppb, also based on application to corn.

A summary of the dietary exposure from drinking water for flubendiamide used for human risk assessment can be found in the documents entitled, "Flubendiamide: Human Health Risk Assessment for Proposed Uses on Alfalfa, Globe Artichokes, the Low Growing Berry Subgroup 13–07G (except Cranberry), Peanuts, Pistachios, the Small Fruit Vine Climbing (except Fuzzy Kiwifruit) Subgroup 13–07F, Safflower, Sorghum, Sugarcane, Sunflower, and Turnip Greens, and an Increased Application Rate for Brassica (Cole) Leafy Vegetables," dated November 30, 2010, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2007–0099. Double-click on the document to view the referenced information on page 27 of 62.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flubendiamide is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* While both the rat and rabbit developmental studies did not identify teratogenic effects and showed no evidence of increased pre-natal susceptibility, adverse eye effects (eye enlargement) were noted in post-natal rat pups older than 14 days in multiple studies (the 2-generation reproduction and 1-generation supplemental studies). Additionally, the DNT study reported eye effects appearing in some offspring between lactation days 14 and 42, even though exposure stopped at lactation day 21, indicating a possible delay (a latent response) from the time of last exposure to onset of bupthalmos. These eye effects did not occur in adult rats. Since the iris and chamber angle are differentiating and specializing into definite structures during post-natal days 5 to 20, neonatal rats appear to have an increased susceptibility to flubendiamide exposure as compared to adults.

In addition to the reported eye effects in the DNT study, there was also a balano-preputial separation (separation of the prepuce (foreskin) from the glans penis (*balanus*)) delay. While this effect is generally considered adverse per se, it is not assumed to be a developmental effect from *in utero* exposure. Here, delayed balano-preputial separation is considered secondary to reduced postnatal pup body weight as a result of post-natal exposure. Furthermore, it was resolved within the appropriate age range of puberty and no effects on reproductive function were observed in the multigeneration study in rats. Delayed balanopreputial separation was seen only at doses causing maternal toxicity and is not more severe than the maternal effects of hepatotoxicity seen at the common pup/maternal LOAEL of the DNT study. Accordingly, the delayed balanopreputial separation seen in the DNT study does not cause concern for increased sensitivity to the young for flubendiamide.

Human microsomes have been shown to be capable of approximately 4 times higher hydroxylation rates of flubendiamide as compared to female mouse microsomes and may be able to efficiently metabolize and excrete flubendiamide, preventing accumulation of the parent compound. It remains unclear whether the ability to metabolize and clear the parent compound is the only requirement to avoid ocular toxicity. Due to the potential ocular toxicity, this perinatal ocular effect is considered in the human health risk assessment for flubendiamide.

3. *Conclusion.* EPA evaluated the quality of the toxicity and exposure data and, based on these data, has determined that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicology database for flubendiamide is complete with the exception of a subchronic neurotoxicity study which is now a new data requirement under 40 CFR part 158; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. Flubendiamide is not a neurotoxic chemical based on neurotoxicity assessments conducted acutely, developmentally and incorporated within the chronic rat study. In several short-term studies in rats (subacute and subchronic feeding, plaque-forming cell assay, one-generation pilot, developmental toxicity) no neurobehavioral signs were observed at doses up to and exceeding the limit dose; therefore, an additional database uncertainty factor is not needed to account for potential neurotoxicity.

ii. There are no treatment-related neurotoxic findings in the acute neurotoxicity and DNT studies in rats; although eye effects were observed in the DNT study. As noted in Unit III.B., the PODs employed in the risk assessment are protective of this effect.

iii. Although susceptibility was identified in the toxicological database (eye effects), the selected regulatory PODs (which are based on clear NOAELs) are protective of these effects; therefore, the human health risk assessment is protective.

iv. There are no residual uncertainties identified in the exposure databases and the exposure assessment is protective. The acute dietary food exposure assessment utilizes tolerance-level residues, the chronic dietary food exposure assessment utilizes average residue levels found in the crop field trials/livestock commodities and both assume 100% of crops with requested uses of flubendiamide are treated. The drinking water assessment generated EDWCs using models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. The highest relevant EDWCs were used in the dietary (food and drinking water) exposure assessment. By using these screening-level exposure assessments in the acute and chronic dietary (food and drinking water) assessments, risk is not underestimated for flubendiamide.

E. Aggregate Risks and Determination of Safety

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

For this action, there is potential exposure to flubendiamide from food and drinking water, but not from residential use sites (as there are no proposed or existing residential uses for flubendiamide). Since hazard was identified via the oral route over both the acute and chronic duration, the aggregate risk assessments considers exposures from food and drinking water consumed over the acute and chronic durations.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, EPA has concluded that acute dietary exposure from food and water to flubendiamide will utilize 3.1% of the aPAD for the general U.S. population and 5% of the aPAD for the most highly exposed population subgroup, children aged 1 to 2 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic dietary exposure to flubendiamide from food and water will utilize 20% of the cPAD for the general U.S. population and 58% of the cPAD for the most highly exposed population subgroup, children aged 1 to 2 years old. There are no proposed or existing residential uses for flubendiamide. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flubendiamide is not expected.

3. *Aggregate cancer risk for U.S. population.* Based on the data summarized and referenced in Unit III.A., flubendiamide has been classified as "Not Likely to be Carcinogenic to Humans," and is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology Liquid Chromatography with tandem Mass Spectrometry detection ((LC/MS/MS), Methods 00816/M002 and 00912) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; *telephone number:* (410) 305–2905; *e-mail address: residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by section 408(b)(4) of FFDCA.

The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, section 408(b)(4) of FFDCA requires that EPA explain the reasons for departing from the Codex level. There are currently no MRLs established by Codex, Canada, or Mexico for flubendiamide.

C. Revisions To Petitioned-For Tolerances

The Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data* was utilized for determining appropriate tolerance levels for many raw agricultural commodities (RACs) which showed quantifiable residues in or on samples that were treated according to the proposed use patterns. The following revisions to tolerance levels were made:

Based upon review of the data supporting PP 0F7685, recalculated beef and dairy cattle, swine, and poultry dietary burdens, and re-evaluation of previously submitted animal feeding studies, EPA has determined that the established tolerances for residues of flubendiamide for milk fat, and the meat and fat of cattle, goat, horse and sheep should be increased to 1.0 ppm, 0.08 ppm and 0.70 ppm, respectively. For swine (hog), EPA has determined that the proposed tolerances for hog, fat at 0.15 ppm; hog, kidney at 0.06 ppm; hog, liver at 0.06 ppm; and hog, muscle at 0.02 ppm should be established as permanent tolerances for residues of flubendiamide in or on hog, fat at 0.15 ppm, and the proposed tolerances for hog, kidney; hog, liver; and hog, muscle should be increased and established as permanent tolerances for residues of flubendiamide in or on hog, meat and hog, meat byproducts; at 0.15 ppm and 0.03 ppm, respectively. For poultry, EPA has determined that the established tolerances for eggs, fat, liver and meat should be increased to 0.40 ppm, 3.0 ppm, 0.60 ppm and 0.10 ppm, respectively.

As part of this regulation, permanent tolerances for residues of flubendiamide in or on alfalfa, forage (25 ppm) and alfalfa, hay (65 ppm) resulting from direct application to the primary crop are being established. These tolerances supersede the currently listed tolerances for indirect or inadvertent residues of flubendiamide in or on alfalfa, forage (0.15 ppm) and alfalfa, hay (0.04 ppm), and; therefore, the indirect/inadvertent residue tolerances are being revoked from 40 CFR 180.639(d).

V. Conclusion

Therefore, new tolerances are being established for residues of flubendiamide [N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide], in or on artichoke, globe at 1.6 parts per million (ppm); berry, low growing, subgroup 13–07G, except cranberry at 1.5 ppm; fruit, small vine climbing except fuzzy kiwifruit, subgroup 13–07F at 1.4 ppm; hog, fat at 0.15 ppm; hog, meat byproducts at 0.15 ppm; hog, meat at 0.03 ppm; peanut, hay at 60 ppm; peanut, meal at 0.03 ppm; peanut, nutmeat at 0.02 ppm; peanut, refined oil at 0.03 ppm; pistachio at 0.06 ppm; safflower, seed at 5.0 ppm; sorghum, grain, forage at 12 ppm; sorghum, grain, grain at 5.0 ppm; sorghum, grain, stover at 14 ppm; sugarcane, cane at 0.30 ppm; sunflower, seed at 5.0 ppm; and turnip, greens at 25 ppm.

The established tolerances for residues of flubendiamide for milk fat, and the meat and fat of cattle, goat, horse and sheep are being increased to 1.0 ppm, 0.08 ppm and 0.70 ppm, respectively. For poultry, the established tolerances for eggs, fat, liver and meat are being increased to 0.40 ppm, 3.0 ppm, 0.60 ppm and 0.10 ppm, respectively.

The established tolerances for residues of flubendiamide for brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; and grain, aspirated grain fractions are being increased to 3.0 ppm, 25 ppm, and 153 ppm, respectively.

The established tolerances for indirect or inadvertent residues of flubendiamide in or on alfalfa, forage (0.15 ppm) and alfalfa, hay (0.04 ppm) are being revoked from 40 CFR 180.639(d), and established as permanent tolerances, in 40 CFR 180.639(a)(2), for residues of flubendiamide in or on alfalfa, forage at 25 ppm; and alfalfa, hay at 65 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides

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

List of Subjects in 40 CFR Part 180

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

Dated: March 15, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.639 is revised to read as follows:

§ 180.639 Flubendiamide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide flubendiamide *per se* N^2-[1,1-Dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on the following commodities:

Commodity	Parts per million
Almond, hulls	9.0
Apple, wet pomace	2.0
Corn, field, forage	8.0
Corn, field, grain	0.03
Corn, field, stover	15
Corn, pop, grain	0.02
Corn, pop, stover	15
Corn, sweet, forage	9.0
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	25
Cotton gin byproducts	60
Cotton, undelinted seed	0.90
Fruit, pome, group 11	0.70
Fruit, stone, group 12	1.6
Grape	1.4
Nut, tree, group 14	0.06
Okra	0.30
Vegetable, cucurbit, group 9	0.20
Vegetable, fruiting, group 8	0.60
Vegetable, leafy, except *Brassica,* group 4	11

(2) Tolerances are established for residues of flubendiamide, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only flubendiamide N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on the following commodities:

Commodity	Parts per million
Alfalfa, forage	25
Alfalfa, hay	65
Artichoke, globe	1.6
Berry, low growing, subgroup 13–07G, except cranberry	1.5
Brassica, head and stem, subgroup 5A	3.0
Brassica, leafy greens, subgroup 5B	25
Cattle, fat	0.70
Cattle, meat	0.60
Cattle, meat byproducts	0.08
Egg	0.40
Fruit, small fruit vine climbing except fuzzy kiwifruit, subgroup 13–07F	1.4
Goat, fat	0.70
Goat, meat	0.60
Goat, meat byproducts	0.08
Grain, aspirated grain fractions	153
Hog, fat	0.15
Hog, meat	0.15
Hog, meat byproducts	0.03
Horse, fat	0.70
Horse, meat	0.60
Horse, meat byproducts	0.08
Milk	0.15
Milk, fat	1.0
Pea and bean, dried shelled, except soybean, subgroup 6C	0.60
Pea and bean, succulent shelled, subgroup 6B	0.05
Peanut, hay	60
Peanut, meal	0.03
Peanut, nutmeat	0.02
Peanut, refined oil	0.03
Pistachio	0.06
Poultry, fat	3.0
Poultry, liver	0.60
Poultry, meat	0.10
Rice, grain [1]	0.50
Safflower, seed	5.0
Sheep, fat	0.70
Sheep, meat	0.60
Sheep, meat byproducts	0.08
Sorghum, grain, forage	12
Sorghum, grain, grain	5.0
Sorghum, grain, stover	14
Soybean, forage	18
Soybean, hay	60
Soybean, hulls	0.80
Soybean, seed	0.25
Sugarcane, cane	0.30
Sunflower, seed	5.0
Turnip, greens	25
Vegetable, foliage of legume, except soybean, subgroup 7A	35
Vegetable, legume, edible podded, subgroup 6A	0.50

[1] There are no U.S. registrations for rice, grain.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the insecticide flubendiamide *per se* N^2-[1,1-Dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on the following raw agricultural commodities when present therein as a result of the application of flubendiamide to the growing crops listed in paragraph (a)(1) of this section:

Commodity	Parts per million
Barley, hay	0.04
Barley, straw	0.07
Buckwheat	0.07
Clover, forage	0.15
Clover, hay	0.04
Grass, forage	0.15
Grass, hay	0.04
Millet, pearl, forage	0.15
Millet, pearl, hay	0.04
Millet, proso, forage	0.15
Millet, proso, hay	0.04
Millet, proso, straw	0.07
Oats, forage	0.15
Oats, hay	0.04
Oats, straw	0.07
Rye, forage	0.15
Rye, straw	0.07
Teosinte, forage	0.15
Teosinte, hay	0.04
Teosinte, straw	0.07
Triticale, forage	0.15
Triticale, hay	0.04
Triticale, straw	0.07
Wheat, forage	0.15
Wheat, hay	0.03
Wheat, straw	0.03

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0477; FRL–8866–2]

Dichlormid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dichlormid in or on field corn, pop corn, and sweet corn commodities. Dow AgroSciences requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 23, 2011. Objections and requests for hearings must be received on or before May 23, 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–2005–0477. 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: Pv Shah, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–1846; e-mail address: *shah.pv@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 those engaged in the following activities:

- 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 to provide 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 EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0477 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 23, 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–2005–0477, 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. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 22, 2010 (75 FR 80489) (FRL–8857–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7517) by Dow AgroSciences, 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing permanent tolerances for residues of the herbicide safener dichlormid, N,N-diallyl-2,2-dichloroacetamide, in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover at 0.05 parts per million (ppm). That notice referenced a summary of the petition prepared by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including

all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

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

In the **Federal Register** of March 27, 2000 (65 FR 16143) (FRL–6498–7), EPA published a final rule establishing time-limited tolerances for residues of the herbicide safener dichlormid in or on field corn forage, grain and stover; and pop corn grain and stover at 0.05 ppm. In the **Federal Register** of September 30, 2004 (69 FR 58285) (FRL–7680–8), EPA published a final rule establishing time-limited tolerances for residues of dichlormid in or on sweet corn forage, kernel plus cob with husks removed, and stover at 0.05 ppm. EPA has extended the expiration date of the time-limited tolerances on several occasions, most recently in the **Federal Register** of July 29, 2009 (74 FR 37621) (FRL–8422–2). The tolerances expired on December 31, 2010.

The corn tolerances were time-limited due to an incomplete database for dichlormid. Data gaps included several chemistry and toxicology studies, as identified in the March 27, 2000 and September 30, 2004 final rules. In addition, in December, 2007, EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides (40 CFR part 158, subpart F), including safeners, such as dichlormid. The outstanding chemistry and toxicology data (including immunotoxicity testing) have all been submitted and reviewed, so that the database for dichlormid is now considered complete. No changes in tolerance levels or toxicological endpoints and doses used in the human health risk assessment for dichlormid are needed as a result of the new data. Copies of EPA's reviews of these data may be found in docket ID number EPA–HQ–OPP–2005–0477.

The risk assessments that EPA relied on in establishing and extending the time-limited tolerances for dichlormid were highly conservative. Due to the nature and number of data gaps and qualitative evidence of increased susceptibility of *in utero* rabbits in a prenatal developmental toxicity study, the FQPA safety factor (SF) was retained at 10X for the acute dietary risk assessment and increased to 30X for the chronic dietary risk assessment. Since the data gaps have been filled, uncertainty factors associated with database deficiencies may be removed. In addition, EPA used tolerance level residues, 100 percent crop treated, and default processing factors in the dietary food exposure assessments and made conservative (protective) assumptions in the modeling used to assess exposure to dichlormid in drinking water. Using these highly conservative assumptions and SFs, acute dietary exposure to dichlormid in food was estimated to be less than or equal to 7.5% of the acute population adjusted dose (aPAD) for all population subgroups; chronic dietary exposure to dichlormid in food was estimated to be less than or equal to 15% of the chronic population adjusted dose (cPAD) for all populations subgroups.

Because this prior risk assessment showed dichlormid risks to be acceptable and the effect of submission of the required data on the assessment of dichlormid risk will be to lower estimated risks (due to the removal of additional safety factors), EPA is relying on that prior risk assessment and the findings in the prior dichlormid FR notices, subject to one modification, to demonstrate the safety of the tolerances established in this action. The one modification of the prior risk assessment and FR notices is to update how exposure to dichlormid in drinking water is factored into the risk assessment.

Previously, EPA assessed aggregate exposure (food and drinking water) to dichlormid using the DWLOC (drinking water level of comparison) approach. The DWLOC is the concentration of a chemical in drinking water that would be acceptable as an upper limit considering total aggregate exposure to that chemical from food, water, and residential sources. In this case, there are no residential uses of dichlormid. Acute and chronic aggregate risks from dichlormid exposure were assessed by comparing the calculated DWLOCs to the estimated environmental concentrations (EECs) of dichlormid in surface water and groundwater. Since the EECs (< 1 ppm in both surface and groundwater) were well below the calculated DWLOCs for acute exposure (73 parts per billion (ppb)) and chronic exposure (20 ppb), acute and chronic aggregate risks were determined to be below the Agency's level of concern. Details of the risk assessment for dichlormid may be found in the document "Human Health Risk Assessment for Dichlormid-Request for Establishing Permanent Tolerances for Dichlormid on Corn," which is available in docket ID number EPA–HQ–OPP–2005–0477.

The Agency no longer uses the DWLOC approach for assessing aggregate exposure to pesticides. Rather, estimated drinking water concentrations (EDWCs) are directly entered into the dietary exposure model to assess the contribution of drinking water exposure to aggregate exposure. EPA then determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. Using this approach, together with the conservative assumptions and SFs discussed earlier in this unit, EPA has concluded that acute and chronic exposure to dichlormid from food and water will utilize 56% of the aPAD and 34% of the cPAD for infants, less than one year old, the population group receiving the greatest exposure.

Based on the prior and updated risk assessments as well as the findings in the prior dichlormid FR notices, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to dichlormid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with nitrogen selective thermionic detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits

(MRLs) established by the Codex Alimentarius Commission (Codex), as required by 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 dichlormid in or on corn commodities.

C. Response to Comments

An anonymous comment was received objecting to the presence of any pesticide residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the FFDCA contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-for Tolerances

EPA is revising the requested tolerance expression to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover residues of the herbicide safener dichlormid, including its metabolites and degradates, but that compliance with the tolerances is to be determined by measuring only dichlormid (2,2-dichloro-*N,N*-di-2-propenylacetamide). EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of dichlormid, including its metabolites and degradates, in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover at 0.05 ppm. Compliance with the tolerances is to be determined by measuring only dichlormid (2,2-dichloro-*N,N*-di-2-propenylacetamide).

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 8, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.469 is amended by revising paragraph (a) to read as follows:

§ 180.469 Dichlormid; tolerances for residues.

(a) *General.* Tolerances are established for residues of dichlormid, including its metabolites and degradates, when used as an inert ingredient (herbicide safener) in pesticide formulations, in or on the commodities in the following table.

Compliance with the tolerances is to be determined by measuring only dichlormid (2,2-dichloro-*N,N*-di-2-propenylacetamide).

Commodity	Parts per million
Corn, field, forage	0.05
Corn, field, grain	0.05
Corn, field, stover	0.05
Corn, pop, grain	0.05
Corn, pop, stover	0.05
Corn, sweet, forage	0.05
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	0.05

* * * * *

[FR Doc. 2011–6440 Filed 3–22–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 100806326–1088–02]

RIN 0648–AY99

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Space Vehicle and Missile Launch Operations at Kodiak Launch Complex, AK

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the Alaska Aerospace Corporation (AAC), is issuing regulations to govern the unintentional taking of small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC) on Kodiak Island, AK. Issuance of regulations is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on their availability for subsistence uses. These regulations do not authorize the AAC's rocket launch activities; such authorization is not within the jurisdiction of the Secretary. Rather, these regulations govern the issuance of Letters of Authorization (LOAs) for the unintentional and incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses. In addition, NMFS incorporates reporting and monitoring requirements on these activities.

DATES: Effective March 22, 2011 to March 22, 2016.

ADDRESSES: A copy of the AAC's application and other related documents may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–713–2289, ext 123.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth in the regulations. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA (16 U.S.C. 1362(18)(A)) defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On June 4, 2010, NMFS received a complete application for regulations from AAC for the taking of small numbers of marine mammals incidental to launching space launch vehicles, long-range ballistic target missiles, and other smaller missile systems at the KLC. A proposed rule was published on December 23, 2010 (75 FR 80773). NMFS received 12 comments on the proposed rule from eight private citizens, the Kodiak Chamber of Commerce, the Kodiak Island Borough Mayor, the City of Kodiak Mayor, and the Marine Mammal Commission (Commission). The majority of the comments supported the proposed rule. These regulations will allow NMFS to issue Letters of Authorization (LOAs) to the AAC over a 5-year period. A full description of the operations is contained in the AAC's application which is available upon request (*see* **ADDRESSES**) or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The AAC conducts space vehicle and missile launches from the KLC, a commercial spaceport that supports civilian and Federal launch customers. The facility occupies 3,717 acres of State-owned lands on the Narrow Cape Peninsula on the eastern side of Kodiak Island, Alaska. The KLC primarily supports launches of small to medium space launch vehicles—which are those used to boost satellites to orbit—ranging in size from the small space-launch Castor 120 motor (used in the Athena, Minotaur IV, Minotaur V, and Taurus I systems) to the under-development medium-lift Taurus II. The KLC is also configured to support launch of the Minuteman I-derived Minotaur I Space Launch System, and to support the launch of long-range ballistic systems such as the Polaris derived A–3 STARS, the Minuteman-derived Minotaur II and III, and the C–4. Launch operations are authorized under license from the Federal Aviation Administration (FAA),

Office of the Associate Administrator for Space Transportation, in accordance with the facility's Environmental Assessment (EA), stipulations in the EA's Finding of No Significant Impact, and in subsequent licenses.

Description of the Specified Activity

The AAC anticipates that the KLC can accommodate up to 45 launches, in total, for the effective period of the regulations. Annually, an average of nine but maximum of 12 launches may occur. Most of these vehicles are expected to be of the Minotaur I through V class, including civil versions of the Castor 120 known as the Athena and Taurus I, or smaller target vehicles. The AAC estimates that of the 45 estimated launches from KLC over the 5-year period in consideration, 32 will be of small space-launch and target vehicles of the Castor 120 or smaller size, 10 will be of THAAD or smaller size, and three will be of the medium-lift Taurus II. A summarized description of each class of space launch and smaller launch vehicles was published in the **Federal Register** (75 FR 80774, December 23, 2010) and a full description can be found online (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*) within the AAC's application.

Launch Noise

Launch operations are a major source of noise on Kodiak Island, as the operation of launch vehicle engines produce substantial sound pressures. In air, all pressures are referenced to 20 micoPascals; therefore all dB levels in this notice are provided re: 20 MicroPa, unless otherwise noted. Generally, four types of noise occur during a launch: (1) Combustion noise; (2) jet noise from interaction of combustion exhaust gases with the atmosphere; (3) combustion noise proper; and (4) sonic booms. Sonic booms are not a concern for pinnipeds on Ugak Island, as sonic booms created by ascending rockets launched from KLC reach the Earth's surface over deep ocean, well past the edge of the Outer Continental Shelf (OCS) (FAA 1996). Spent first-stage motors from space lift missions (*i.e.,* those going to orbit) fall to Earth at least 11, and possibly more than 300, miles down range (well past the edge of the OCS), depending on launch vehicle (U.S. FAA 1996). A complete description of launch noise measured from Ugak Island, including previously launched and recorded space vehicles, can be found in the proposed rule (75 FR 80775, December 23, 2010).

Another component of the AAC's launches includes security overflights. In the days preceding the launch, these occur approximately 3 times per day based on the long-term average. Flights associated with the launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (0.4 km), and will maintain a vertical distance of 1,000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law. Over the operational history of these flights, aircraft have been operated within the 0.25-mile limit on two occasions; both involved direct overflight of the Steller sea lion haulout spit, which was unoccupied each time the incursions occurred.

Description of Marine Mammals in the Area of the Specified Activity

The AAC's current MMPA regulations (71 FR 4297, January 26, 2006), which are set to expire February 28, 2011, require aerial surveys be conducted before and after each launch to monitor for presence and abundance of marine mammals within the designated 6-mile action area. In compliance with these conditions, the AAC has completed these surveys since 2006. Aerial survey data indicate that Steller sea lions, harbor seals, gray whales (*Eschrichtius robustus*), humpback whales (*Megaptera novaeangliae*), and sea otters (*Enhydra lutris*) occur within the action area. Although potentially present, cetaceans within the action area are not expected to be taken during the specified activities. Airborne noise is generally reflected at the sea surface outside of a 26° cone extending downward from the ascending rocket (Richardson *et al.,* 1995); therefore, little sound energy passes into the sea across the air-water boundary. Submerged animals would have to be directly underneath the rocket to hear it, and given the hypersonic velocity of launch vehicles in the atmosphere, the duration of sounds reaching any cetacean would be discountable. In addition, all spent rocket motors will fall into the open ocean over deep water. Given the very short time a cetacean is at the surface, direct impact from spent motors can be discounted as can any noise related impacts. Based on these reasons, NMFS does not anticipate take of cetaceans incidental to the specified activity; hence, they will not be discussed further. Sea otters are managed by the U.S. Fish and Wildlife Service; therefore no take of sea otters is included in the proposed regulations. As such, this species is not discussed further in this final rule.

Steller Sea Lions

Steller sea lions are designated into two stocks by NMFS. Those west of 144° longitude, which includes the KLC area, are listed as endangered under the ESA. Historically, mature and sub-adult males have used a spit on the northwestern side of Ugak Island as a post-breeding haulout. This spit is located 3.5 miles from the launch pad complex (*see* figure 4 and 5 in the application). The historic occupancy period ranges from June to September (post breeding), with peak reported numbers in the hundreds (Sease 1997; ENRI 1995–1998). However, use has declined in recent times in keeping with general declines seen in the species as a whole. The spit is designated a long-term trend count site by NMFS and has been surveyed once yearly, with June as the target, since the 1990s. Counts since 2000 have generally been zero (*e.g.,* NMFS, 2009; Fritz and Stinchcomb, 2005), which is in line with the counts from all other long-term trend count sites in the Kodiak Archipelago over the same time period. All of these other long-term trend sites are far removed from the 6-mile radius anticipated impact area up range from KLC (*i.e.,* areas opposite to the flight path), in areas not exposed to launch noise. Hence, Steller sea lion abundance has declined throughout the region, not just the area affected by launches, and the losses are likely not a result of or connected with the launches or use of KLC.

Data from AAC's aerial surveys over the past four years also support low use of the haulout. Since 1999, five launches have occurred during the Steller sea lion season. The spit haulout has not been used by Steller sea lions during launch-monitoring surveys since 1999 (ENRI, 2000, R&M, 2007a,b, 2008); however, during recent launch surveys one to several Stellar sea lions have been observed from time-to-time utilizing a supratidal rock on eastern Ugak Island (termed East Ugak Rock) as a haulout. Tables 2 and 4 in the application provide a breakdown of survey results per day. In summary, two to eight sea lions were observed per day on East Ugak Rock during surveys for the FTG–02 launch (R&M, 2006b), and one to five (per day) were observed during the FTX–03 launch (R&M, 2008). In addition, during one aerial survey that was completed outside the June to September timeframe (during the FTG–05 campaign in December 2008), a single Stellar sea lion was observed on East Ugak Rock. East Ugak Rock is

located farther east and to the south of the KLC than Ugak Island; therefore, one can assume launch generated sound levels here are less than those at Ugak Island.

Harbor Seals

Harbor seals are the most abundant marine mammal species found within the action area. Harbor seals are not listed as threatened or endangered under the ESA or as depleted under the MMPA. Based on the AAC's aerial survey counts from launch monitoring reports conducted since January 2006, approximately 97% of all observed harbor seals are found on the eastern shore of Ugak Island, approximately 5 miles from the launch pad complex. The eastern shore is backed by high steep cliffs that reach up to 1,000 feet above sea level. These cliffs form a visual and acoustic barrier to rocket operations, and alleviate effects on the species. This conclusion is based on review of sound pressure recordings made at the haulout spit found on the island's northwestern shore, which showed surf and wind-generated sound pressures at sea level were generally in the >70 dBA (SEL) range on the clearest days (Cuccarese *et al.,* 1999, 2000). During inclement weather periods ambient sound pressures at sea level can exceed 100 dBA (SEL). The island's eastern shore is windward to prevailing winds and surf noise is routinely high. Harbor seals located on Ugak Island's northern shore are not as protected from launch noise, and therefore may be harassed incidental to the AAC's specified activity. However, harbor seal abundance on the northern shores is limited due to the lack of suitable habitat (*i.e.,* few beaches). During 30 aerial surveys conducted by the AAC during six rocket launches from 2006 to 2008, no seals were observed on North Ugak Island on 19 occasions. During surveys when seals were present, average abundance was 25 with a single day count of 125 individuals.

Because physical access to Ugak Island harbor seal haulouts is difficult and dangerous, the only abundance and behavior data of these seals have been derived from aerial surveys conducted by the AAC. Harbor seals generally breed and molt where they haul out, so it is assumed that both of these activities take place on Ugak Island, and young seals have routinely been seen there during launch-related aerial surveys. Pupping in Alaska takes place generally in the May to June time frame; molting occurs generally from June to October. Both periods contain peaks in haulout attendance. Total counts on Ugak Island have increased steadily since the 1990s from several hundred (ENRI 1995–1998) up to a peak of about 1,500 today (R&M 2007a, 2007b, 2008, 2009).

Potential Effects on Marine Mammals

As discussed above, launch operations are a major source of noise on Kodiak Island and can reach Steller sea lion and harbor seal haulouts and rookeries on Ugak Island. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels (RLs), will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to noise are likely to be dependent on a variety of factors including, but not limited to, the behavioral state (*e.g.,* resting, socializing, *etc.*) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, and the level of the sound relative to ambient conditions (Southall *et al.,* 2007). In general, marine mammal impacts from loud noise can be characterized as auditory and non-auditory.

Potential Auditory Impacts

Auditory impacts consist of injurious (*e.g.,* ruptured ear drums, permanent threshold shift [PTS]) or non-injurious (*e.g.,* temporary threshold shift [TTS]) effects. There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (*i.e.,* 40 dB of TTS).

Given the distance from the pad area to Ugak Island and the measured sound levels from the Castor 120 (101.4 dB), for the loudest space vehicle used at the KLC, pinniped auditory injury is not anticipated. Further explanation was provided in the proposed rule **Federal Register** notice (75 FR 80777, December 23, 2010). Regarding TTS, although hearing sensitivity was not apparently affected during the ABR testing, that is not to say that TTS did not occur, as seals were tested approximately 2 hours after launch, not immediately following the launch. However, if TTS did occur, hearing was fully recovered within 2 hours. In conclusion, NMFS has preliminarily determined PTS would not occur in pinnipeds on Ugak Island and TTS, although unlikely, may occur. However, if pinnipeds on Ugak Island experience TTS, full-hearing recovery is expected shortly after exposure.

Potential Behavioral Impacts

To comply with their current regulations, the AAC attempted to collect video footage of pinnipeds during launches; however, weather, technical, and accessibility issues prevented video coverage from being obtained. Therefore, no immediate responses of pinnipeds to the AAC's launch noise have been documented. However, as discussed above, VAFB researchers have been investigating the short- and long-term effects of space vehicle launch noise and sonic booms on pinnipeds. As described in NMFS' 2009 EA, the percentage of seals that left the haulout increased as noise level increased up to approximately 100 decibels (dB) A-weighted SEL, after which almost all seals left, although recent data have shown that an increasing percentage of seals may remain on shore. Using time-lapse video photography, VAFB discovered that during four launch events, the seals that reacted but remained on the haulout were all adults. VAFB theorized that adult seals may have habituated to launch stimuli more so than less-experienced younger seals; hence the less-severe reactions. Further information on this research can be found within the proposed rule (75 FR 80777, December 23, 2010).

The behavioral data record for Steller sea lions is small throughout the North Pacific range and typically is focused on reproductive behaviors. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year.

The infrequent (approximately nine times per year) and brief (no more than 1 minute as heard from Ugak Island) nature of these sounds that would result from a rocket launch is not expected to alter the population dynamics of Steller sea lions or harbor seals which utilize Ugak Island as a haulout site. If launches occur during the harbor seal pupping period and harbor seals have also chosen to pup on the north beach, it is possible that harbor seal pups could be injured or killed as a result of the adults flushing in response to the rocket noise, or the mother/pup bond could be permanently broken. However, NMFS does not expect harbor seal pup injury

and mortality to occur to a great degree, due to previous research studies that are summarized in the proposed rule (75 FR 80778, December 23, 2010).

Finally, the KLC conducts approximately three security overflights per day in the days preceding a launch. Several studies of both harbor seals and Steller sea lions cited in Richardson *et al.* (2005) suggest that these animals respond significantly less to overflights of both planes and helicopters that occur above 305 m (0.2 mi). NMFS does not anticipate harassment from overflights to occur as they generally remain at least 0.25 miles from a haulout; however, if the pilot or crew notice overt responses from pinnipeds (*e.g.,* flushing) to aircraft, this response will be noted and reported to NMFS in the flight report. Observations made of any animals displaced by a security overflight are reported to the environmental monitoring team for inclusion in their report of monitoring results.

Anticipated Effects on Habitat

Solid-fuel rocket boosters will fall into the ocean away from any known or potential haulouts. All sonic booms that reach the earth's surface are expected to occur over open ocean, beyond the OCS. Airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a cone of approximately 26 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds. Overall, rocket launch activities from the KLC are not expected to cause any impacts to habitats used by marine mammals, including pinniped haulouts, or to their food sources.

Comments and Responses

On December 23, 2010 (75 FR 80773), NMFS published a notice of proposed rulemaking on the AAC's request to take marine mammals incidental to rocket launches at KLC and requested comments, information, and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from eight private citizens, the Kodiak Chamber of Commerce, the Kodiak Island Borough Mayor, the City of Kodiak Mayor, and the Commission. Six of the private citizens—four of them residents of Kodiak, Alaska—and all of the city/borough officials wrote in support of the proposed rule. One private citizen expressed general opposition to anything related to the military. The remaining comments and NMFS' responses are detailed below.

Comment 1: The AAC should be required to obtain video footage of the harbor seal reactions to launches from the KLC. Furthermore, NMFS does not provide specific indications of what will be reviewed or potentially modified should the distribution, size, or productivity of either pinniped population be affected from the launches.

Response: As explained in the proposed rule, the AAC will be purchasing and placing one remote live-streaming video system to overlook a harbor seal haulout on the eastern side of Ugak Island. The purpose is to monitor for any behavioral reactions of harbor seals to the launches. The language about reviewing monitoring data and potentially modifying mitigation and monitoring requirements is put in place as an adaptive management measure. Data from aerial surveys and camera footage will be reviewed for unusual behavior, injury, or death. Any modifications to the mitigation or monitoring requirements will be determined on a case-by-case basis.

Comment 2: The Commission recommends that NMFS include in its final rule all of the applicant's proposed mitigation and monitoring measures, including those described in the preamble of the proposed rule.

Response: NMFS has included all of the required mitigation and monitoring measures in the final rule, including those described in the preamble.

Comment 3: The Commission recommends that NMFS require the AAC to use a remote video-camera system to monitor harbor seals on the eastern side of Ugak Island during at least five launches. If the cameras detect any disturbance, then the Commission recommends that the applicant and NMFS consult to determine what monitoring adjustments are needed and, if the authorized harbor seal takes are exceeded due to disturbance on the eastern side of the island, the applicant should consult with NMFS to determine if amendments to the regulations or letters of authorization are needed.

Response: The use of a remote video-camera system to monitor harbor seals on the eastern side of Ugak Island during at least five launches is a required monitoring measure for the AAC under this rulemaking. If any disturbance to the animals' behavior is detected, the regulations require that the AAC consult with NMFS to determine if any mitigation or monitoring modifications are necessary. Furthermore, if the authorized harbor seal takes are exceeded, the regulations require that the AAC consult with NMFS to determine if amendments to the regulations or letters of authorization are needed.

Comment 4: The Commission recommends that NMFS require appropriate monitoring of Steller sea lions before, during, and after launches to determine if the launches are disturbing the sea lions' use of Ugak Island and possibly discouraging more sea lions from hauling out there.

Response: After the first five launches, cameras may be repositioned to monitor Steller sea lions on Ugak Island. Monitoring of Stellers under the previous rule (2006 to 2011) showed one of the following: (1) No sea lions present during a launch; (2) all sea lions present became alert but did not move immediately following a launch; or (3) some sea lions present were flushed into the water temporarily. Attempts will be made by the AAC to capture further sea lion behavioral responses at the time of launch.

Comment 5: The Commission recommends that NMFS advise the applicant of the need to consult with the Fish and Wildlife Service regarding the potential incidental take of sea otters.

Response: The AAC is aware of the Fish and Wildlife Service's jurisdiction over the incidental take of sea otters.

Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

To minimize impacts on pinnipeds at haulout sites, NMFS is requiring the following mitigation measures: (1) Security overflights associated with the launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (0.4 km), and will maintain a vertical distance of 1,000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law; (2) the AAC will avoid launches during the harbor seal pupping season (May 15 to June 30), unless constrained by factors including, but not limited to, human safety and national security; and (3) if launch monitoring detects pinniped injury or death, or if long-term trend

counts from quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods will be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes may be made through modifications to a given LOA, prior to conducting the next launch of the same vehicle under that LOA.

NMFS carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner and the degree to which the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation. The required mitigation measures take scientific studies (Richardson *et al.,* 2005) of overflight effects on pinnipeds into consideration. By avoiding launches during the harbor seal pupping season, the AAC will avoid all Level A harassment and mortality, which is only anticipated to occur as a result of pups being trampled or separated from their mothers. Lastly, the adaptive nature of the proposed mitigation measures allow for adjustments to be made if launch monitoring or quarterly aerial surveys indicate that impacts to the distribution, size, or productivity of pinniped populations are occurring.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public during the 30-day comment period, NMFS has determined that the aforementioned mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The AAC plans to purchase and place one remote live-streaming video system overlooking one of the harbor seal haulouts on the eastern side of Ugak Island for the first five launches conducted under these regulations to verify the assumption that seals on the eastern side of the island are not affected by launches. Although animals on the northern shore are more likely to be affected by the action, this area is predominantly a rocky reef tidal area where seals haul out opportunistically, either singly or in small numbers on exposed rocks. There is more confidence seals will be visible and able to be monitored on the eastern side of the island. After five launches, AAC and NMFS will reassess the efficiency of the camera system and possibly move it to another location (*e.g.,* the traditional Steller sea lion haulout).

The selected haulout will be viewed either in real time or via "tape" delay for six days using the following schedule where day length permits. The six-day schedule will be roughly centered on the day of launch, with launch day being day three of the monitoring schedule. The video stream will be viewed by professional biologists for 4 hours each day with monitoring centered on the time of launch on launch day, and on low tide on the other days. Detailed information on when monitoring will occur around a launch is provided in the AAC's application. Data collected from the live stream video will include number of animals observed, by age and sex class when possible, behavior (*e.g.,* resting), animal response to launches, and re-occupation time if disturbed.

The video system was developed, tested, and first put into service in Alaska, and has proven itself over many years of operation both in Alaska and around the world. The video system is all weather proven and autonomous, drawing energy from a combination of wind and solar generators. It features a camera that includes a lens that can be focused (zoom and pan) on command and provides live-streaming video that can be made available through Internet access to interested researchers in real time.

The AAC will also carry out quarterly aerial surveys to determine long-term trend counts of Steller sea lions and harbor seals within the action area. Surveys will be flown midday and centered around low tide for optimal seal counts. The aircraft will survey from a distance appropriate to count seals or sea lions, but far enough away to minimize harassment. Data collected will include number of seals or sea lions per haulout, by age class when possible, and if any disturbance behavior is noted from aircraft presence.

In addition to visual monitoring, whenever a new class of rocket is flown from the KLC, a real time sound pressure record will be obtained for documentation purposes and correlated with the behavioral response record. Two sound pressure monitors will be used: one will be placed at the established sound pressure recording location known as Narrow Cape and the other as close as practical to the remote video system.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA (16 U.S.C. 1362(18)(A) defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

As described above, Steller sea lions hauled out on Ugak Island may become alert or flush into the water in response to launch noise. Sound exposure levels from the loudest launch may reach approximately 101.4 dBA at the traditional Steller sea lion haulout. Based on this recorded level and the fact that audible launch noise will be very short in duration, sea lions are not expected to incur PTS, and the chance of TTS is unlikely. No injury or mortality of Stellar sea lions is anticipated, nor is any authorized. Therefore, NMFS authorizes Steller sea lion take, by Level B harassment only, incidental to launches from KLC.

Harbor seals of all age classes hauled out on the northern side of Ugak Island will likely react in a similar manner as Steller sea lions (and may become alert or flush into the water) to launches from KLC. Therefore, harbor seals may be taken by Level B harassment incidental to rocket launch noise. However, during the pupping season (May 15 to June 30),

pups may also be injured, killed, or separated from their mother during a flushing event. Therefore, NMFS authorizes Level A harassment and mortality of harbor seal pups, should launches during the harbor seal pupping season be unavoidable.

As discussed above, security overflights associated with a launch will not closely approach or circle any sea lion or seal haulout site. Therefore, incidental take from this activity is not anticipated. Should the pilot or crew on the plane observe pinnipeds reacting to their presence, the plane will increase altitude and note the number of animals reacting to the plane. This data will be included in the AAC's final marine mammal report.

The AAC estimates that up to 45 launches may occur from the KLC over the course of the 5-year period covered by the proposed rulemaking. Annually, the AAC estimates an average of nine launches will occur. Most of these vehicles are expected to be of the Minotaur I through V class, including civil versions of the Castor 120 known as the Athena and Taurus I or smaller target vehicles. The AAC estimates that no more than one launch will occur over a 4-week period, and it is likely the frequency of launches will be less than this estimate.

Based on aerial survey data, the AAC estimates a maximum of ten Steller sea lions could be present during launches occurring during the Steller sea lion season (the maximum number of animals sighted during a survey of this season has been eight). Any sea lions present during the launches will be adult or juvenile males; therefore, no reproductive processes or pupping will be affected by the specified activities. Assuming that all nine launches (the average number of launches predicted by the AAC) occur during the Steller sea lion season, that all nine launches involve the Castor 120 (the loudest vehicle expected to be flown from KLC over the period to be covered by the proposed regulations), and that there is no habituation to rocket motor effects with experience, then up to 90 takes by harassment could occur per year (ten animals/launch × nine launches). However, it is more reasonable to assume that a maximum of four launches per year could occur during the 2-month Steller sea lion season, and that no more than eight Stellers would be present at any given time (the maximum number recorded). Therefore, NMFS authorizes the take, by Level B harassment, of 32 Steller sea lions per year (eight animals × four launches).

The total number of harbor seals present on Ugak Island ranges up to about 1,500, most of which are found on the island's eastern shore where they are sheltered from launch effects by the 1,000-foot tall cliffs that stand between their haulouts and the KLC. Relatively few harbor seals use haulouts on the northern side of the island across from the KLC due to the lack of suitable beaches. No seals were observed on northern haulouts, which consist primarily of isolated rocks, during 19 of 30 marine mammal surveys flown by the AAC from 2006 to 2008. When present, the majority of counts on northern haulouts showed fewer than 25 individuals; however, a one-time high count of about 125 animals on these rocks has been made. Using the conservative and rare high number of 125 as being a representative figure, the AAC estimates that up to 125 individuals might be taken per launch operation. Therefore, NMFS authorizes 1,125 harbor seal (125 seals/launch × nine launches/year) takes during launch operations.

The actual number of pups taken by Level A harassment or mortality is difficult to quantify, as age class was not identified during the AAC's previous monitoring efforts (age class distinction will occur under the current monitoring and reporting requirements). Given that seals do not use the northern haulouts in large numbers (as compared to the protected eastern haulouts), the number of pups on the area of the island exposed to launch noise is likely low. Actual numbers will likely be smaller given the low and variable use of the area by harbor seals.

To better determine the potential number of pups on Ugak Island during launches, NMFS consulted with Ms. Kate Wynne, a marine mammal specialist with the Alaska Sea Grant Marine Advisory Program, who has previously flown aerial surveys within the action area. Her data, from the early 1990s, indicates that pup counts on the northern side of Ugak Island averaged approximately 17. Although this data is not recent, it is the best available. NMFS does not anticipate that all pups on a haulout would be injured or killed during a launch and, in fact, many may not be taken by Level A harassment or mortality. However, in the unlikely event injury or mortality occurs, NMFS authorizes 17 harbor seal pup takes by Level A harassment or mortality, annually, incidental to AAC's activities.

Previous Activities and Monitoring

As previously discussed, under AAC's current regulations (valid February 27, 2006 through February 28, 2011) and annual LOAs, AAC has been conducting marine mammal monitoring within the action area before and after launch events to satisfy the monitoring requirements set forth in MMPA authorizations. The objective of monitoring Steller sea lions and Pacific harbor seals is to detect any indications of pinniped disturbance, injury, or mortality resulting from KLC rocket launches at the Ugak Island haulout site. Monitoring requirements included: (1) Conducting fixed-wing aerial surveys at least one day prior to, immediately after, and three days following any launches taking place from June 15 through September 30, weather permitting; (2) installing a remote custom-designed, closed-circuit, weatherproof, time-lapse video camera system at the base of the traditional Steller sea lion haulout before any launch occurring from June 15 through September 30; and (3) making an attempt to place a video camera with zoom lens on the accessible western end of the north-facing shore to record harbor seal behavior on the middle or eastern end of the shore, or on the rocks offshore (recall that the eastern side of Ugak Island—where the majority of seals are—is completely inaccessible to pedestrian or boat traffic due to the high cliffs and violent surf).

The regulations also contained noise monitoring requirements; these data are discussed in the *Description of the Specified Activity* section above. The AAC complied with the noise monitoring conditions contained within the regulations and annual LOAs. Further information on the AAC's previous activities and monitoring results can be found within the proposed rule (75 FR 80780, December 23, 2010).

NMFS has shifted its focus from direct Steller sea lion to harbor seal monitoring under these regulations. The AAC will monitor harbor seal reactions to rocket launches during the launch itself via a type of camera system currently used by the Alaska Sea Life Center to monitor haulouts and rookeries. The camera will be placed at a harbor seal pupping location on Ugak Island to better assess the likelihood that harbor seal pups may be abandoned, injured, or killed as a direct result of a rocket launch disturbance. The camera system will be installed and operating if the AAC conducts a launch during the harbor seal pupping season. Unlike the previous system, this camera system does not need to be retrieved to acquire data and battery power is not problematic. Therefore, the AAC can place it at a harbor seal haulout during good weather no matter the number of days before a launch and does not have to be concerned with retrieving it. These factors will likely eliminate the previous

issues with video monitoring designed to detect pinniped reactions at the time of the launch. In addition, the camera system will have a zoom lens for better viewing quality.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers (and should explicitly address whenever possible) the following: (1) Number of anticipated mortalities; (2) number and nature of anticipated injuries; (3) number, nature, intensity, and duration of Level B harassment; (4) is the nature of the anticipated takes such that we would expect it to actually impact rates of recruitment or survival; (5) context in which the takes occur; and (6) species or stock status.

In the past few years, the AAC has conducted no more than two launches on an annual basis. Regardless, NMFS has analyzed the specified activity to include disturbance events of up to nine launches per year as they anticipate the capability to carry out more efficient mission turn-around time over the duration of the final regulations. Mortalities and injuries are only authorized for harbor seal pups, and these are not expected due to small and variable harbor seal populations using the northern haulout sites, as well as the nature of pups and the early bonds formed between pups and mothers. Level B harassment of Steller sea lions is possible due to rocket launch noise, but is considered unlikely based on projected sound levels and the short duration of the noise; therefore, rates of sea lion recruitment or survival are not expected to be impacted. Rates of harbor seal recruitment or survival are also not expected to be impacted due to the limited number of mortalities or injuries to harbor seal pups (less than one percent of population). Due to the fact that no sonic booms are audible from Ugak Island, NMFS does not anticipate the potential for PTS to occur and TTS is unlikely, but possible. These assumptions are justified from ABR data collected at and around VAFB from similar launch activities. Further, based on aerial survey data, the harbor seal population on this island is increasing. Given that harbor seals are considered a species that is easily disturbed, their resilience to launch effects suggest any impacts from launches are short-term and negligible. The amount of take the AAC has requested, and NMFS authorizes, is considered small (less than one percent of Stellers and less than three percent of harbor seals) relative to the estimated stock populations of 41,197 Steller sea lions in the Western U.S. and 44,453 harbor seals in the Gulf of Alaska.

Mitigation measures to reduce noise from launches once in the air are virtually impossible; however, the noise generated on the launch pad during ignition moves through a deep trench (called a flame trench or flame bucket) that diverts the noise/exhaust toward the northwest (away from Ugak Island). The primary method of minimizing impacts to pinnipeds from launch noise is to minimize the number of launches when possible during sensitive times.

In addition, improved monitoring will better enable the AAC and NMFS to determine if impacts from rocket launches are having short-term and long-term impacts on the present day pinniped populations on Ugak Island. The camera system will be able to detect immediate impacts from launch exposure, including the number of pinnipeds flushing at the haulout site, while quarterly aerial surveys will aid in determining long-term trends of pinniped abundance. NMFS conservatively anticipates a small number of pups may be injured or killed during a launch. However, there is no empirical data to prove or disprove this as no video monitoring of seals during the launch has been successful (the one time a video system was placed near the haulout, no seals were observed). As discussed previously, the population of harbor seals on Ugak Island has increased steadily from several hundred in the 1990s (ENRI 1995–1998) to a peak of about 1,500 today (R&M 2007a, 2007b, 2008, 2009). Therefore, NMFS does not believe there will be any long-term impact on the health of the population if pup mortality occurs from launches. The required monitoring measures contained within this notice are specifically designed to, among other things, determine if pup injury or mortality is occurring (*i.e.,* from flushing, separation of mothers and pups, *etc.*) due to rocket launches from the AAC.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that space vehicle and missile launches at the KLC will result in the incidental take of small numbers of marine mammals, but that the total taking will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

Endangered Species Act (ESA)

The Steller sea lion is the only marine mammal species under NMFS' jurisdiction that is listed as endangered under the ESA with confirmed or possible occurrence in the action area. In the 2003 Biological Opinion, NMFS determined that the proposed actions would not result in jeopardy to the affected species or result in adverse modification of critical habitat. In 2005, the AAC, on behalf of the FAA, consulted with NMFS, under Section 7 of the ESA, on the impacts of space vehicle and rocket launches on Steller sea lions. NMFS consulted internally under the ESA on its proposed issuance of the AAC's 2006 MMPA regulations and subsequent LOAs. NMFS also consulted internally on the issuance of the final regulations (effective from March 2011, through February 2016) for this activity under section 101(a)(5)(A) of the MMPA. In a Biological Opinion (BiOp), NMFS Alaska Region concluded that the AAC's activities at the KLC and NMFS' issuance of these regulations are not likely to jeopardize the continued existence of Steller sea lions or destroy or adversely modify any designated critical habitat.

NMFS Alaska Region will also issue BiOps and associated incidental take statements (ITSs) to NMFS' Permits, Conservation, and Recreation Division to exempt the take (under the ESA) that NMFS authorizes in the LOAs under the MMPA. Because of the difference between the statutes, it is possible that ESA analysis of the applicant's action could produce a take estimate that is different than the takes requested by the applicant (and analyzed for authorization by NMFS under the MMPA process), despite the fact that the same proposed action (*i.e.,* number and type of launches) was being analyzed under each statute. When this occurs, NMFS staff coordinates to ensure that the most conservative (lowest) number of takes is authorized. For the AAC's activities at the KLC, coordination with the NMFS Alaska Region indicates that they will likely allow for the same

amount of take of Steller sea lions that was requested by the applicant.

The ITS(s) issued for each LOA will contain implementing terms and conditions to minimize the effect of the marine mammal take authorized through the 2011 LOA (and subsequent LOAs in 2012, 2013, 2014, and 2015). With respect to listed marine mammals, the terms and conditions of the ITSs will be incorporated into the LOAs.

National Environmental Policy Act (NEPA)

In 1996, the FAA prepared an EA, and subsequently issued a Finding of No Significant Impact (FONSI), for the AAC's proposal to construct and operate a launch site at Narrow Cape on Kodiak Island, Alaska. Since 1998, the AAC has provided monitoring reports related to noise and marine mammal impacts associated with ongoing rocket launches from KLC. After reviewing the new information contained in the monitoring reports, and considering the Commission's comments that impacts to harbor seals should be more comprehensively addressed, NMFS decided that a more current environmental analysis was necessary. In 2005, NMFS prepared an EA and associated FONSI on the Promulgation of Regulations Authorizing Take of Marine Mammals Incidental to Rocket Launches at Kodiak Launch Complex, Alaska, and the Issuance of Subsequent Letters of Authorization. NMFS found that the promulgation of a 5-year rulemaking in 2006 and issuance of subsequent LOAs would not significantly impact the quality of the human environment, and therefore issued a FONSI. Accordingly, preparation of an Environmental Impact Statement or Supplemental Environmental Impact Statement for this action was not necessary. NMFS has determined that because neither the action nor the environmental baseline in the area has changed significantly from that analyzed in previous NEPA documents, further analysis under NEPA is not necessary for issuance of regulations and subsequent LOAs extending into 2016.

Classification

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Good cause exists to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d), because delaying the rule's effectiveness is contrary to the public interest and is unnecessary. While there are no launches specifically scheduled for March 2011, the U.S. Air Force has told the AAC to be prepared for a potential launch as early as March. Because these launches may be necessary for national security, it is in the public's interest to have these regulations take effect immediately, before the AAC's current regulations expire on February 28, 2011. The AAC has requested a waiver of the 30-day delay in effectiveness for this rule in order to ensure that the rule goes into effect March 1, 2011, the day after the current regulations expire. A launch delay would lead to increased risk for personnel if there is increased handling time for hazardous materials or ordnance that has to be deactivated or offloaded, depending on the stage of launch preparations at the time of delay. Delaying this initial launch could also delay other scheduled launches for the following months. Additionally, the measures contained in this final rule are substantially similar to the measures contained in the five-year rule that expires on February 28, 2011. Accordingly, delaying the effectiveness of these rules is not necessary to provide time to allow the affected entities to come into compliance with the rules. Moreover, this rule does not impose any requirements or obligations on the public. For these reasons, there is good cause to waive the 30-day delay in effectiveness of this rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. A description of this final rule and its purpose are found in the preamble to this rule, and are not repeated here. NMFS received no comments or questions regarding this certification. For a copy of the certification, *see* **ADDRESSES.**

Notwithstanding any other provision of law, no person is 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 (PRA) unless that collection of information displays a currently valid OMB control number. This rule contains a collection-of-information requirement subject to the provisions of the PRA. This collection has been approved previously by OMB under section 3504(b) of the PRA issued under OMB control number 0648–0151, which includes applications for LOAs and reports.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 16, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart H is added to read as follows:

Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches at Kodiak Launch Complex, Alaska

Sec.
217.70 Specified activity and specified geographical region.
217.71 Effective dates.
217.72 Permissible methods of taking.
217.73 Prohibitions.
217.74 Mitigation.
217.75 Requirements for monitoring and reporting.
217.76 Letter of Authorization.
217.77 Renewal of a Letter of Authorization and adaptive management.
217.78 Modifications to a Letter of Authorization.

Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches at Kodiak Launch Complex, Alaska

§ 217.70 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in space vehicle and missile launch activities at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to 32 juvenile and adult Steller sea lions (*Eumetopius jubatus*), 1,125 Pacific harbor seals (*Phoca vitulina*) of all ages, and 17 harbor seal pups.

§ 217.71 Effective dates.

Regulations in this subpart are effective from March 22, 2011 through March 22, 2016.

§ 217.72 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to § 216.106 of this

chapter, the Alaska Aerospace Corporation and its contractors may incidentally, but not intentionally, take Steller sea lions and Pacific harbor seals by Level B harassment and harbor seal pups by Level A harassment or mortality in the course of conducting space vehicle and missile launch activities within the area described in § 217.70(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in § 217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 217.73 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under § 216.106 of this chapter.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 217.74 Mitigation.

(a) The activity identified in § 217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 217.70(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 of this chapter and 217.76 must be implemented. These mitigation measures include (but are not limited to):

(1) Security overflights by helicopter associated with a launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (0.4 km), and will maintain a vertical distance of 1000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law;

(2) For missile and rocket launches, holders of Letters of Authorization must avoid launches during the harbor seal pupping season of May 15 through June 30, except when launches are necessary for the following purposes: human safety, national security, space vehicle launch trajectory necessary to meet mission objectives, or other purposes related to missile or rocket launches.

(3) All flights by fixed-wing aircraft associated with the marine mammal abundance quarterly surveys must maintain a minimum altitude of 500 ft (152 m) and remain 0.25 miles from recognized seal haulouts.

(4) If launch monitoring or quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods will be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes may be made through modifications to a given LOA, prior to conducting the next launch of the same vehicle under that LOA.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.75 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 of this chapter and 217.76 for activities described in § 217.70(a) are required to cooperate with NMFS, and any other Federal, State, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail or telephone, prior to each launch. If the authorized activity identified in § 217.70(a) is thought to have resulted in the take of marine mammals not identified in § 217.70(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), within 48 hours of the discovery of the take.

(b) Holders of Letters of Authorization must designate qualified protected species observers, approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Deploy for AAC a remote camera system designed to detect pinniped responses to rocket launches for at least the first five launches conducted under these regulations. AAC will conduct visual monitoring for at least 2 hours before, during, and 2 hours after launch;

(2) Ensure a remote camera system will be in place and operating in a location which allows visual monitoring of a harbor seal rookery, if a launch during the harbor seal pupping season cannot be avoided;

(3) Relocate the camera system to or re-aim the camera system on another haulout to be chosen in cooperation with NMFS after the first five launches with harbor seals present;

(4) Review and log pinniped presence, behavior, and re-occupation time data from the visual footage obtained from the remote camera system and report results to NMFS within 90 days post launch;

(5) Obtain, whenever a new class of rocket is flown from the Kodiak Launch Complex, a real-time sound pressure and sound exposure record for documentation purposes and to correlate with the behavioral response record. Two monitors shall be used: one shall be placed at the established recording location known as Narrow Cape, and the other as close as practical to the remote video system;

(6) Conduct quarterly aerial surveys, ideally during midday coinciding with low tide, to obtain data on pinniped presence, abundance, and behavior within the action area to determine long-term trends in pinniped haulout use. Results of these quarterly surveys will be reported once as part of the year-end summary report that will accompany the request for a new LOA.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Alaska Region Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch;

(2) Location of camera system and acoustic recorders (if used);

(3) Design of the monitoring program and a description of how data is stored and analyzed; and

(4) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds, by species and age class (if possible), present on the haulout prior to commencement of the launch;

(ii) Numbers of pinnipeds, by species and age class (if possible), that may have been harassed, including the number that entered the water as a result of launch noise;

(iii) The length of time pinnipeds remained off the haulout during post-launch monitoring;

(iv) Number of harbor seal pups that may have been injured or killed as a result of the launch; and

(v) Other behavioral modifications by pinnipeds that were likely the result of launch noise.

(5) Results of sound pressure and sound exposure level monitoring will be reported in flat weighted, A-weighted, and peak measurements.

(e) An annual report must be submitted at the time of request for a renewal of the Letter of Authorization; it will include results of the aerial quarterly trend counts of pinnipeds at Ugak Island.

(f) A final report must be submitted at least 90 days prior to expiration of these regulations if new regulations are sought or 180 days after expiration of regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports;

(2) Assess the impacts of launch activities on pinnipeds within the action area, including potential for pup injury and mortality; and

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from multiple rocket launches.

§ 217.76 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization with a period of validity less than the effective period of the regulations in this subpart may be renewed subject to renewal conditions in § 217.76.

(c) A Letter of Authorization will set forth:

(1) The number of marine mammals, by species and age class, authorized to be taken;

(2) Permissible methods of incidental taking;

(3) Specified geographical region;

(4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(5) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 217.77 Renewal of a Letter of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 217.76 for the activity identified in § 217.70(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application for a Letter of Authorization submitted under § 217.76 will be undertaken and that there will not be a substantial modification to the described activity, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of and acceptance by NMFS of the monitoring reports required under § 217.75;

(3) A determination by NMFS that the mitigation, monitoring, and reporting measures required under §§ 217.74 and 217.75 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.128 of this chapter indicates that a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days to review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration; and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

(d) NMFS, in response to new information and in consultation with the AAC, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation or monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the AAC's monitoring from the previous year.

(2) Results from general marine mammal and sound research.

§ 217.78 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under § 217.77 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.70(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. 2011–6886 Filed 3–22–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 56
Wednesday, March 23, 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

Agricultural Marketing Service

7 CFR Part 28

[AMS–CN–10–0111; CN–11–001]

RIN 0581–AD11

User Fees for 2011 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2011 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2010. These fees are also authorized under the Cotton Standards Act of 1923. The 2010 crop user fee was $2.20 per bale, and AMS proposes to continue the fee for the 2011 cotton crop at that same level. This proposed fee and the existing reserve are sufficient to cover the costs of providing classification services for the 2011 crop, including costs for administration and supervision.

DATES: Comments must be received on or before April 7, 2011.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Rm. 2635–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Room 2635, South Building, 1400 Independence Avenue, SW., Washington, DC.

Comments can also be reviewed on: *regulations.gov.* A copy of this notice may be found at: h*ttp://www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Room 2635–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 2010 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2010 user fee for classification services was $2.20 per bale; the fee for the 2011 crop would be maintained at $2.20 per bale; the 2011 crop is estimated at 16,500,000 bales);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2010 crop, 18,150,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service; and

(4) Based on the average price paid to growers for cotton from the 2009 crop of 0.6210 cents per pound, 500 pound bales of cotton are worth an average of $311 each. The proposed user fee for classification services, $2.20 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This proposed rule would maintain the 2010 user fee of $2.20 per bale charged to producers for cotton classification for the 2011 cotton crop. The 2010 user fee was set in accordance to section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). Prior to the change in the 2008 Farm Bill, the fee was determined using a user-fee formula mandated in the Uniform Cotton Classing Fees Act of 1987, as amended (Pub. L. 100–108, 728) (1987 Act). This formula used the previous year's base fee that was adjusted for inflation and economies of size (1 percent decrease/increase for every 100,000 bales above/below 12.5 million bales with maximum adjustment being ±15 percent). The user fee was then further adjusted to comply with operating reserve constraints (between 10 and 25 percent of projected operating costs) specified by the 1987 Act.

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of

classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform, per-bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar amount per bale classed) is proposed for the 2011 cotton crop that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount of at least four months of projected operating costs.

The user fee proposed to be charged cotton producers for cotton classification in 2011 is $2.20 per bale which is the same fee charged for the 2010 crop. This fee is based on the pre-season projection that 16,500,000 bales will be classed by the United States Department of Agriculture during the 2011 crop year.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the cotton classification fee at $2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at $2.20 per bale.

The fee for returning samples after classification in § 28.911 would remain at 50 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed fees, if adopted, would be made effective for the 2011 cotton crop on July 1, 2011.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended to read as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: March 16, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–6835 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AMS–FV–11–0011; FV11–929–1]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York to determine whether they favor continuance of the marketing order regulating the handling of cranberries grown in the production area.

DATES: The referendum will be conducted from May 16 through May 31, 2011. To vote in this referendum, growers must have been engaged in producing cranberries within the production area during the period September 1, 2009, through August 31, 2010.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Washington DC Marketing Field Office, 4700 River Road, Unit 155, Riverdale, Maryland 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural

Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Dawana J. Clark or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or e-mail at: *Dawana.Clark@ams.usda.gov* or *Kenneth.Johnson@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 929 (7 CFR part 929), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period May 16 through May 31, 2011, among eligible cranberry growers in the production area. Only growers that were engaged in the production of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York during the period of September 1, 2009, through August 31, 2010, may participate in the continuance referendum. Ballots postmarked after May 31, 2011, will be marked invalid and not included in the vote tabulation.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if less than 50 percent of the growers who vote in the referendum and growers of less than 50 percent of the volume of cranberries represented in the referendum favor continuance of their program.

In evaluating the merits of continuance versus termination, the USDA will not merely consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189, OMB Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,200 producers of cranberries in the production area to cast a ballot. Participation is voluntary.

Kenneth G. Johnson and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 16, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–6833 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–11–0010; FV11–946–1 CR]

Irish Potatoes Grown in Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible Washington potato growers to determine whether they favor continuance of the marketing order regulating the handling of Irish potatoes grown in Washington.

DATES: The referendum will be conducted from June 11 through June 24, 2011. To vote in this referendum, growers must have grown potatoes for the fresh market in Washington during the period July 1, 2009, through June 30, 2010.

ADDRESSES: Copies of the marketing order may be obtained from the Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, 805 SW. Broadway, Suite 930, Portland, Oregon 97205, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov,* respectively.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 946 (7 CFR part 946), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted from June 11 through June 24, 2011, among eligible Washington potato growers. Only growers that were engaged in the production of fresh potatoes in Washington during the period of July 1, 2009, through June 30, 2010, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if fewer than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Washington potatoes represented in the referendum favor continuance of their program. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the order as well as relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in

the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It has been estimated that it will take an average of 20 minutes for each of the approximately 267 Washington potato growers to cast a ballot. Participation is voluntary. Ballots postmarked after June 24, 2011, will not be included in the vote tabulation.

Teresa Hutchinson and Gary D. Olson of the Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400–900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 16, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–6829 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Doc. No. AMS–FV–10–0095]

Blueberry Promotion, Research, and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers and importers of highbush blueberries to determine whether they favor continuance of the Blueberry Promotion, Research, and Information Order (Order).

DATES: This referendum will be conducted by mail ballot from July 5, 2011, through July 26, 2011. To be eligible to vote in this referendum, blueberry producers and importers must have produced or imported 2,000 pounds or more of highbush blueberries annually during the representative period of January 1, 2010, through December 31, 2010. Ballots must be received by the referendum agents no later than the close of business on July 26, 2011, to be counted.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RPB), Fruit and Vegetable Programs (FVP), AMS, USDA, Stop 0244, Room 0632–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, *telephone:* 888–720–9917 (toll free), *fax:* 202–205–2800, *e-mail: Veronica.Douglass@ams.usda.gov;* or at *http://www.ams.usda.gov/fvpromotion.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by eligible producers and importers of highbush blueberries. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2010, through December 31, 2010. Persons who produced or imported 2,000 pounds or more of highbush blueberries during the representative period are eligible to vote in the referendum. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from July 5, 2011, through July 26, 2011.

Section 518 of the Act authorizes continuance referenda. Under section 1218.71(b) of the Order, the Department of Agriculture (Department) shall conduct a referendum every five years or when 10 percent or more of the eligible voters petition the Secretary of Agriculture to hold a referendum to determine whether persons subject to assessment favor continuance of the Order. The Department would continue the Order if continuance of the Order is approved by a majority of the producers and importers voting in the referendum, who also represent a majority of the volume of blueberries produced or imported during the representative period determined by the Secretary.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 2,000 producers and 50 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Veronica Douglass, RPB, FVP, AMS, USDA, Stop 0244, Room 0632–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, is designated as the referendum agent to conduct this referendum. The referendum procedures 7 CFR 1218.100 through 1218.107, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known highbush blueberry producers and importers of 2,000 pounds or more prior to the first day of the voting period. Persons who are producers and importers during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer or importer who does not receive a ballot should contact the referendum agent no later than one week before the end of the voting period. Ballots must be received by the referendum agent by 5 p.m. Eastern Daylight Savings Time, July 26, 2011, in order to be counted.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

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

Dated: March 16, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–6827 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AD73

Orderly Liquidation Authority

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing and requests comments on a rule that would implement certain provisions of its authority to resolve covered financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or the "Act"). This proposed rule ("Proposed Rule") builds on the interim final rule published by the FDIC on January 25, 2011 ("Interim Final Rule") to address additional provisions of Title II. The Proposed Rule addresses the following issues: the definition of a "financial company" subject to resolution under Title II by establishing criteria for determining whether a company is "predominantly engaged in activities that are financial in nature or incidental thereto;" recoupment of compensation from senior executives and directors, in limited circumstances, as provided in section 210(s) of the Dodd-Frank Act; application of the power to avoid fraudulent or preferential transfers; the priorities of expenses and unsecured claims; and the administrative process for initial determination of claims and the process for judicial determination of claims disallowed by the receiver.

DATES: Written comments must be received by the FDIC not later than May 23, 2011.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include "RIN 3064–AD73" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* 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. (EDT).
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments.
- *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. Paper copies of public comments may be ordered from the Public Information Center by telephone at (703) 562–2200 or 1–877–275–3342.

FOR FURTHER INFORMATION CONTACT: Marc Steckel, Associate Director, Division of Insurance and Research, 202–898–3618; or R. Penfield Starke, Senior Counsel, Legal Division, (703) 562–2422. For questions to the Legal Division concerning the following parts of the Proposed Rule contact:

Definition of predominantly engaged in financial activities: Ryan K. Clougherty, Senior Attorney (202) 898–3843.

Avoidable transfer provisions: Phillip E. Sloan, Counsel (703) 562–6137.

Compensation recoupment: Patricia G. Butler, Counsel (703) 516–5798.

Subpart A—Priorities of Claims: Elizabeth Falloon, Counsel (703) 562–6148.

Subpart B—Receivership Administrative Claims Procedures: Thomas Bolt, Supervisory Counsel (703) 562–2046.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010. Title II of the Dodd-Frank Act provides for the appointment of the FDIC as receiver of a covered financial company following the prescribed recommendation, determination and judicial review process set forth in the Act. Title II outlines the process for the orderly liquidation of such a covered financial company following the FDIC's appointment as receiver and provides for additional implementation of the orderly liquidation authority by rulemaking. The Proposed Rule is intended to provide clarity and certainty with respect to how key components of the orderly liquidation authority will be implemented and to ensure that the liquidation process under Title II reflects the Dodd-Frank Act's mandate of transparency in the liquidation of covered financial companies. Among the significant issues addressed in the Proposed Rule are the priority for the payment of claims and the process for the determination of claims by the receiver and for seeking a judicial adjudication of any claims disallowed in whole or in part. While it is not expected that the FDIC will be appointed as receiver for a covered financial company in the near future, it is important for the FDIC to have rules in place in a timely manner in order to allow stakeholders to plan transactions going forward.

The Proposed Rule is promulgated under section 209 of the Act which authorizes the FDIC, in consultation with the Financial Stability Oversight Council, to prescribe such rules and regulations as the FDIC considers necessary or appropriate to implement Title II. Section 209 of the Act also provides that, to the extent possible, the FDIC shall seek to harmonize such rules and regulations with the insolvency laws that otherwise would apply to a covered financial company.

This is the second rulemaking for the FDIC under section 209. On October 19, 2010, the FDIC published in the **Federal Register** a notice of proposed rulemaking to implement certain orderly liquidation provisions of Title II. That rulemaking culminated in the Interim Final Rule published on January 25, 2011, to be codified at 12 CFR 380.1–380.6, that addressed discrete topics that were critical for initial guidance for the financial industry, including the payment of similarly situated creditors, the honoring of personal services contracts, the recognition of contingent claims, the treatment of any remaining shareholder value in the case of a covered financial company that is a subsidiary of an insurance company, and limitations on liens that the FDIC may take on the assets of a covered financial company that is an insurance company or covered subsidiary.

The October 19, 2010 notice of proposed rulemaking solicited comments not only on the first proposed rule but also on more general aspects of the orderly liquidation authority of Title II. This comment period ended on January 18, 2011. These comments have been considered with respect to the determination of the scope and contents of the Proposed Rule.

The Proposed Rule continues to develop the framework begun with the Interim Final Rule. While the Interim Final Rule addressed only certain discrete issues under Title II, the Proposed Rule enhances the initial framework by addressing broader issues that define the rights of creditors in Title II receiverships. For example, while the Interim Final Rule specified the treatment of "similarly situated creditors" in § 380.2, it did not address the treatment of creditors generally within the overall structure provided by Title II for the payment of creditors. The Proposed Rule takes the next step by defining the priorities of payment for creditors in a single rule clarifying the meaning of "administrative expenses" and "amounts owed to the United States," detailing the priority of setoff claims, specifying how post-insolvency interest will be paid, and clarifying the payment of claims for contracts and agreements expressly assumed by a bridge financial company. While the Proposed Rule does not alter the rules adopted by the Interim Final Rule, certain subsections of that latter rule likely will be incorporated into Subpart A on priorities when the Proposed Rule is finalized in order to provide greater

thematic coherence. New Subpart B addresses another key element of creditor rights by specifying the process for initial determination of claims and the steps necessary to seek a judicial decision on any disallowed claims. As a result, the Proposed Rule will provide a "roadmap" for creditors to better understand their substantive and procedural rights under Title II by defining key elements determining how their claims will be determined and in what priority they will be paid. The discrete issues addressed in the IFR should be viewed as components that fit within this broader framework.

Other provisions of the Proposed Rule address other foundational elements of Title II. Section 380.8 of the Proposed Rule helps define which companies may be subject to resolution under Title II, by clarifying the meaning of "financial company" in Section 201 of the Dodd-Frank Act. Section 380.7 and the amendments to section 380.1 help define how compensation may be clawed back from senior executives and directors responsible for the failure of the covered financial company under section 210(s) of the Dodd-Frank Act. Section 380.9 of the Proposed Rule will clarify the application of the receiver's powers to avoid fraudulent and preferential transfers to ensure they conform to the similar powers under the Bankruptcy Code.

Some comments revealed unfamiliarity with the FDIC's resolution process by stakeholders outside the banking industry. By elaborating on the details of the orderly liquidation process, the Proposed Rule seeks to explain the role of the FDIC as receiver for a covered financial company. While the orderly liquidation process under the Dodd-Frank Act resembles the process the FDIC undertakes in the resolution of insured depository institutions in many respects, and reflects the experience developed by the FDIC in resolving those institutions, these regulations implement newly enacted provisions of the Dodd-Frank Act and do not necessarily inform or interpret the provisions of the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.* ("FDI Act"), and the law governing the resolution of failed insured depository institutions. Thus, some provisions implementing the Dodd-Frank Act may expand the rights and duties of parties with an interest in the resolution, or otherwise provide rights and duties that differ from those under the FDI Act.

A common thread among many comments was the nature of the relationship between the orderly liquidation process under the Dodd-Frank Act and the Bankruptcy Code. Congress mandated that, to the extent possible, the FDIC will harmonize the rules adopted under section 209 of the Act with the Bankruptcy Code or otherwise applicable insolvency laws. While acknowledging certain express differences between the Title II orderly liquidation process and other insolvency regimes, this Proposed Rule was prepared with this statutory mandate in mind.

Finally, many comments emphasized the importance of allowing sufficient time in the rulemaking process to fully consider the complex issues raised under the Dodd-Frank Act. This Proposed Rule is a second incremental step in the rulemaking process and will invite input from stakeholders through additional questions posed as part of the Notice of Proposed Rulemaking. Additional rulemaking will follow, including certain rules required by the Act, such as rules governing receivership termination, receivership purchaser eligibility requirements, records retention requirements, as well as the orderly resolution of broker-dealers, including the priority scheme and claims process applicable to broker-dealers.

II. The Proposed Rule

Companies Predominantly Engaged in Financial Activities

Section 380.8 of the Proposed Rule establishes standards for determining if a company is predominantly engaged in financial activities. If a company is determined to be predominantly engaged in such activities for purposes of the definition of "financial company" under Title II of the Act, it may be subject to the orderly liquidation provisions of Title II.

Section 201(a)(11) of the Dodd-Frank Act defines "financial company," for purposes of Title II of the Act, as any company incorporated or organized under any provision of Federal law or the laws of any State that is: (i) A bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 ("BHC Act"); (ii) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System ("Board of Governors"); (iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act,[1] or (iv) any subsidiary of such companies that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act, other than a subsidiary that is an insured depository institution or insurance company.[2]

Section 201(b) of the Dodd-Frank Act provides that, for the purposes of defining the term "financial company" under section 201(a)(11), "[n]o company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the [BHC Act], if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary [of Treasury], shall establish by regulation. In determining whether a company is a financial company under [Title II], the consolidated revenues derived from the ownership or control of a depository institution shall be included."

Accordingly, the FDIC is issuing a regulation that defines the term "predominantly engaged" and creates a new definition of "financial activity" to encompass the activities the Dodd-Frank Act includes in the 85 percent calculation. The FDIC consulted with the Board of Governors during the development of this section of the Proposed Rule. The Board of Governors has issued a notice of proposed rulemaking entitled "Definitions of 'Predominantly Engaged in Financial Activities' and 'Significant' Nonbank Financial Company and Bank Holding Company" (Board of Governors' NPR).[3] The Board of Governors' NPR addresses the definition of "predominantly engaged in financial activities" for purposes of determining if an entity is a nonbank financial company under Title I of the Dodd-Frank Act.

Definition of Predominantly Engaged

The Proposed Rule defines a company as being predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of

[1] 12 U.S.C. 1843(k).

[2] Section 201(a)(11) also provides that "financial company" does not include Farm Credit System institutions chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*), or governmental or regulated entities as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)). Consistent with section 201(b) of the Dodd-Frank Act, the criteria in the Proposed Rule for determining if a company is predominantly engaged in financial activities would not apply to such entities.

[3] 76 FR 7731 (February 11, 2011).

section 4(k) of the BHC Act if: (1) At least 85 percent of the total consolidated revenues of the company for *either* of its two most recent fiscal years were derived, directly or indirectly, from financial activities or (2) based upon all the relevant facts and circumstances, the Corporation determines that the consolidated revenues of the company from financial activities constitute 85 percent or more of the total consolidated revenues of the company. As required under section 201(b) of the Act, the FDIC consulted with the Secretary of the Treasury during the development of this portion of the Proposed Rule.[4]

The case-by-case determination provided for in (2) above is designed to provide the FDIC the flexibility, in appropriate circumstances, to consider whether a company meets the 85 percent consolidated revenue test based on the full range of information that may be available concerning the company's activities (including information obtained from other Federal or state financial supervisors or agencies) at any time. For example, a company's revenues, as well as the risks the company may pose to the U.S. financial system, may change significantly and quickly as a result of various types of transactions or actions, such as a merger, consolidation, acquisition, establishment of a new business line, or the initiation of a new activity. Moreover, these transactions and actions may occur at any time during a company's fiscal year and, accordingly, the effects of the transactions or actions may not be reflected in the year-end consolidated financial statements of the company for several months. The Proposed Rule allows the FDIC to promptly consider the effect of changes in the nature or mix of a company's activities as a result of such a transaction or action where such changes may affect whether the company should be a financial company for purposes of Title II. A determination based on the facts and circumstances would be made by the FDIC Board of Directors, unless delegated. The FDIC expects to conduct such a case-by-case review only when justified by the circumstances.

While section 201(b) of the Dodd-Frank Act provides that a company's consolidated revenues are to be used in determining whether the company is predominantly engaged in financial activities, it does not specify the time period over which such consolidated revenues should be considered in making such a determination. The FDIC is proposing that either of the last two fiscal years is the appropriate time period for determining whether a company meets the 85 percent revenue test (the "two-year test"). The FDIC believes that the two-year test provides appropriate flexibility in determining whether a company is predominantly engaged in financial activities. The two-year test would capture, for example, a company whose revenues have traditionally met or exceeded the 85 percent consolidated revenue test but that experienced a temporary decline in such revenues during its last fiscal year. Additionally, the two-year test is similar to a proposal recently promulgated by the Board of Governors that addresses whether a company is predominantly engaged in financial activities for the purposes of determining if such a company is a nonbank financial company under Title I.[5]

Under the Proposed Rule, a company would *not* be considered to be predominantly engaged in financial activities under the two-year test, and thus would not be a financial company, if the level of such company's financial revenues were below the 85 percent consolidated revenue threshold in both of its two most recent fiscal years. The Proposed Rule defines "total consolidated revenues" as the total gross revenues of a company and all entities subject to consolidation by the company for a fiscal year, as determined in accordance with applicable accounting standards. "Applicable accounting standards" is defined under the Proposed Rule as the accounting standards a company uses in the ordinary course of business in preparing its consolidated financial statements, provided those standards are: (i) U.S. generally accepted accounting principles; (ii) International Financial Reporting Standards; or (iii) such other accounting standards that the FDIC determines to be appropriate.

The FDIC believes the Proposed Rule's approach to calculating consolidated revenue is appropriate for several reasons. First, the approach reduces the potential for companies to arbitrage the 85% consolidated revenue test by changing the accounting standards used for purposes of this Proposed Rule. Specifically, the Proposed Rule provides that the accounting standards used for calculating total consolidated revenues must be the same standards that the company uses in the ordinary course of its business in preparing its consolidated financial statements. Second, by calculating consolidated revenues using the accounting standards that a company uses in the ordinary course of its business, the Proposed Rule also reduces the potential regulatory burden on companies. Finally, the FDIC believes the methodology for calculating consolidated revenues under the Proposed Rule is likely to provide an accurate basis for determining whether companies are financial companies for the purposes of Title II.

Definition of Financial Activity

The Proposed Rule defines "financial activity" to include: (i) Any activity, wherever conducted, described in section 225.86 of the Board of Governors' Regulation Y or any successor regulation;[6] (ii) ownership or control of one or more depository institution[s]; and (iii) any other activity, wherever conducted, determined by the Board of Governors in consultation with the Secretary of the Treasury, under section 4(k)(1)(A) of the BHC Act,[7] to be financial in nature or incidental to a financial activity.

Section 225.86 of the Board of Governors' Regulation Y references the activities that have been determined to be financial in nature or incidental thereto under section 4(k) of the BHC Act. Section 4(k) of the BHC Act authorizes the Board of Governors, in consultation with the Secretary of the Treasury, to determine in the future that additional activities are "financial in nature or incidental thereto."[8] The Proposed Rule recognizes that the Board of Governors may determine that additional activities, beyond those already identified in § 225.86 of the Board of Governors' Regulation Y, are financial or incidental activities for the purposes of section 4(k) of the BHC Act. Upon such a determination with respect to an activity, the Proposed Rule includes any revenues derived from such activity as revenues derived from financial or incidental activities.[9]

[4] The FDIC also contacted the Board of Governors and other voting members of the Financial Stability Oversight Council (FSOC) in the development of this section. The FDIC notes that Title I includes a separate definition of "nonbank financial company" that is used for purposes of that Title's provisions related to enhanced supervision by the Board of Governors following a systemic determination by the FSOC. The Board of Governors has responsibility for issuing regulations that define the term "predominantly engaged in financial activities" for purposes of Title I. The Title I definition of nonbank financial company does not take into account "incidental" activities, but does include an asset test in addition to a revenue test. *See,* 12 U.S.C. 5523 *et seq.;* and 12 U.S.C. 5531.

[5] *See,* 76 FR 7731 (February 11, 2001).

[6] *See,* 12 CFR 225.86.

[7] *See,* 12 U.S.C. 1843(k)(1)(A).

[8] 12 U.S.C. 1843(k)(1) and (2).

[9] Besides authorizing financial holding companies to engage in activities that have been determined to be "financial in nature or incidental

Continued

Neither section 201(a)(11) nor section 201(b) of the Dodd-Frank Act impose any additional conditions beyond those that may apply under section 4(k) of the BHC Act or the Board of Governors' Regulation Y for an activity to be considered a financial or incidental activity for purposes of determining whether a company is a financial company under Title II. Accordingly, the Proposed Rule broadly defines "financial activities" to include all financial or incidental activities, regardless of: (i) Where the activity is conducted by a company; (ii) whether a bank holding company or a foreign banking organization could conduct the activity under some legal authority other than section 4(k) of the BHC Act; and (iii) whether any Federal or state law other than section 4(k) of the BHC Act may prohibit or restrict the conduct of the activity by a bank holding company.

For example, all investment activities that are permissible for a financial holding company under the merchant banking authority in section 4(k)(4)(H) of the BHC Act and the Board of Governors' implementing regulations [10] are considered financial activities under the Proposed Rule even if some portion of those activities could be conducted by a financial holding company under another or more limited investment authority (such as the authority in section 4(c)(6) of the BHC Act,[11] which allows bank holding companies to make passive, non-controlling investments in any company if the bank holding company's aggregate investment represents less than five percent of any class of voting securities and less than 25 percent of the total equity of the company). Likewise, all securities underwriting and dealing activities are considered financial activities for purposes of the Proposed Rule even if a bank holding company or other company affiliated with a depository institution may be limited in the amount of such activity it may conduct or may be prohibited from broadly engaging in the activity under the "Volcker Rule." [12]

Rules of Construction

To further facilitate determinations under the Proposed Rule and to reduce burden, the Proposed Rule includes two rules of construction governing the application of the two-year test to revenues derived from a company's minority, non-controlling equity investments in *unconsolidated* entities.

Under the first rule of construction, the revenues derived from a company's equity investment in another company (investee company), the financial statements of which are *not* consolidated with those of the company under applicable accounting standards, would be considered as revenues derived from a financial activity if the investee company itself is predominantly engaged in financial activities under the revenue test set forth in the Proposed Rule (non-consolidated investment rule). Treating all of the revenues derived from such an investment as derived from a financial activity based on the aggregate mix of the investee company's revenues is consistent with the statutory definition of financial company generally, which treats an entire company as a financial company if 85 percent of its consolidated revenues are derived from financial activities. This approach also avoids requiring a company to determine the precise percentage of an investee company's activities that are financial in order to determine the portion of the company's revenues derived from the investment that should be treated as derived from such activities. Lastly, the non-consolidated investment rule is similar to the approach proposed by the Board of Governors for determining whether a nonbank company is predominantly engaged in financial activities under Title I.[13]

The second rule of construction would permit (but not require) a company to treat revenues it derives from certain *de minimis* equity investments in investee companies as *not* derived from financial activities without having to separately determine whether the investee company is itself predominantly engaged in financial activities ("*de minimis* rule"). The *de minimis* rule would be subject to several conditions designed to limit the potential for these *de minimis* investments to substantially alter the character of the activities of the company.

Specifically, the *de minimis* rule provides that a company may treat revenues derived from an equity investment in an investee company as revenues *not* derived from financial activities (regardless of the type of activities conducted by the investee company), if: (i) The company owns less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the investee company; (ii) the financial statements of the investee company are not consolidated with those of the company under applicable accounting standards; (iii) the company's investment in the investee company is *not* held in connection with the conduct of any financial activity (such as, for example, investment advisory activities or merchant banking investment activities) by the company or any of its subsidiaries; (iv) the investee company is not a bank, bank holding company, broker-dealer, insurance company, or other regulated financial institution; and (v) the aggregate amount of revenues treated as nonfinancial under the rule of construction in any year does not exceed five percent of the company's total consolidated financial revenues.

The FDIC consulted with the Board of Governors during the development of this section of the Proposed Rule. The Board of Governors has issued a notice of proposed rulemaking entitled "Definitions of 'Predominantly Engaged in Financial Activities' and 'Significant' Nonbank Financial Company and Bank Holding Company" ("Board of Governors' NPR").[14] The Board of Governors' NPR addresses the definition of "predominantly engaged in financial activities" for purposes of determining if an entity is a nonbank financial company under Title I of the Dodd-Frank Act.

Recoupment of Compensation

Section 380.7 of the Proposed Rule establishes criteria for the circumstances under which the FDIC as receiver will seek to recoup compensation from persons who are substantially responsible for the failed condition of a covered financial company.

Background

When appointed receiver for a failed covered financial company, the FDIC is required to exercise its Title II authority to liquidate failing financial companies in a manner that furthers the statutory purposes of Title II as set forth in section 204(a) of the Act: mitigation of

thereto" section 4(k)(1) of the BHC Act also permits a financial holding company to engage in activities the Board of Governors has determined to be "complementary to financial activities and do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally." *See,* 12 U.S.C. 1843(k)(1)(B). Because section 201(a)(11) refers only to activities that have been determined by the Board of Governors to be financial in nature or incidental thereto under section 4(k), activities that have been (or are) determined to be "complementary" to financial activities under section 4(k) are not considered financial or incidental activities for purposes of determining whether a company is predominantly engaged in activities that are financial in nature or incidental thereto under section 201(a)(11) of the Dodd-Frank Act.

[10] *See,* 12 CFR 225.170 *et seq.*

[11] 12 U.S.C. 1843(c)(6).

[12] 12 U.S.C. 1851 *et seq.*

[13] *See,* 76 FR 7731 (February 11, 2011).

[14] 76 FR 7731 (February 11, 2011).

significant risk to the financial stability of the United States and minimization of moral hazard. In fulfilling these goals, the FDIC must "* * * take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility." [15] In order to carry out this mandate, the FDIC as receiver may recover from senior executives and directors who were substantially responsible for the failed condition of a covered financial company any compensation that they received during the two-year period preceding the date on which the FDIC was appointed as receiver of the covered financial company, or during an unlimited time period in the case of fraud. Section 210(s)(3) of the Act directs the FDIC to promulgate regulations to implement the compensation recoupment requirements of section 210(s) of the Act. The purpose of this section is to provide guidance on how the FDIC will implement its authority by identifying the circumstances in which the FDIC as receiver will seek to recoup compensation from persons who are substantially responsible for the failed condition of a covered financial company.

Substantially Responsible

In assessing whether a senior executive or director is substantially responsible for the failed condition of the covered financial company, the FDIC as receiver will investigate: (1) How the senior executive or director performed his or her duties and responsibilities, and (2) the results of that performance. Senior executives and directors who perform their responsibilities with the requisite degree of skill and care will not be required to forfeit their compensation. The health of the financial industry depends on these persons remaining committed to the industry. If a senior executive or director fails to meet the requisite degree of skill and care, however, the FDIC as receiver will determine what results that failure had on the covered financial company, by considering any loss to the covered financial company caused individually or collectively by the senior executive or director. Furthermore, to be held responsible, the loss to the financial condition must have materially contributed to the failure of the covered financial company. The FDIC is considering the use of additional qualitative and quantitative benchmarks to establish that the loss materially contributed to the failure of the covered financial company. Financial indicators under consideration as possible benchmarks are assets, net worth and capital, and the percentage or magnitude of loss associated with these benchmarks that would establish a material loss and trigger substantial responsibility. The FDIC solicits comments on these and other potential benchmarks that may be used to effectively evaluate loss.

Presumptions

In the event that the FDIC is appointed as receiver for a covered financial company, certain persons will be presumed substantially responsible for the financial condition of the company. Substantial responsibility shall be presumed when the senior executive or director is the chairman of the board of directors, chief executive officer, president, chief financial officer, or acts in any other similar role regardless of his or her title if in this role he or she had responsibility for the strategic, policymaking, or company-wide operational decisions of the covered financial company. The FDIC as receiver also will presume the substantial responsibility of a senior executive or director who has been adjudged by a court or tribunal to have breached his or her duty of loyalty to the covered financial company. Finally, in order to ensure consistency this presumption also extends to a senior executive or director who has been removed from his or her position with a covered financial company under section 206(4) or section 206(5) of the Act.

An individual presumed to be substantially responsible for the failed condition of a covered financial company based on his or her position or role in the covered financial company may rebut the presumption of substantial responsibility for the condition of the covered financial company by proving that he or she performed his or her duties with the requisite degree of skill and care required by the position. This determination will be made on a case-by-case basis. A senior executive or director presumed to be substantially responsible for the failed condition of a covered financial company based on his or her removal from his or her position under sections 206(4) or 206(5) of the Act, or based on an adjudication that he or she breached his or her duty of loyalty to the covered financial company may rebut the presumption by proving that he or she did not did not cause, either individually or in conjunction with others, a loss to the covered financial company that materially contributed to the failure of the covered financial company.

Exceptions to Presumptions

Senior executives or directors who join a covered financial company specifically for the purpose of improving its financial condition are exempted from this presumption if they were employed by the covered financial company for this purpose within the two years preceding the appointment of the FDIC as receiver. However, although they are not subject to the presumption, the FDIC as receiver may still seek recoupment of their compensation if their actions nevertheless establish that they are substantially responsible for the failed condition of the covered financial company.

The use of a rebuttable presumption of substantial responsibility under certain circumstances is consistent with its use in other regulatory and common law areas. The Office of the Comptroller of the Currency uses rebuttable presumptions to determine when an individual's acquisition of bank stock will result in the acquisition by that individual of the power to direct the bank's management or policies. 12 CFR 5.50. The Social Security Administration uses presumptions to establish total disability. 20 CFR part 410. At common law, the existence of certain facts, such as exclusive control in negligence cases or disparate impact in discrimination cases, is viewed as sufficient to require some form of rebuttal evidence.

The authority of the FDIC as receiver to recoup compensation from senior executives and directors is separate from the authority granted to the FDIC as receiver in other sections of Title II to pursue recovery from senior executives and directors for losses suffered by a failed covered financial company. The FDIC as receiver is not precluded from pursuing recovery based on other grants of authority in Title II of the Act because it recoups compensation from senior executives and directors under Section 210(s).

Section 380.1 of the Proposed Rule amends the existing § 380.1 promulgated pursuant to the January 25, 2011 Interim Final Rule to add definitions of the terms "compensation" and "director," and to apply the definition of "senior executive" included in § 380.3 of the Interim Final

[15] Section 204(a)(3) of the Act.

Rule wherever the phrase "senior executive" is used in the Proposed Rule and throughout part 380. The definition of the term "compensation" incorporates the definition mandated in section 210(s)(3) of the Act. The Proposed Rule's definition for the term "director" includes those persons who are in a position to affect the activities of the covered financial company and who have a material effect on the financial condition of the covered financial company.

Treatment of Fraudulent and Preferential Transfers

Section 380.9 of the Proposed Rule addresses the powers granted to the FDIC as receiver in section 210(a)(11) of the Act to avoid certain fraudulent and preferential transfers and seeks to harmonize the application of these powers with the analogous provisions of the Bankruptcy Code so that the transferees of assets will have the same treatment in a liquidation under the Dodd-Frank Act as they would in a bankruptcy proceeding.

There are two areas in which there is a potential for inconsistent treatment of transferees under a Title II orderly liquidation as compared to a Chapter 7 bankruptcy liquidation. The first issue relates to the standard used in determining whether the FDIC as receiver can avoid a transfer as fraudulent or preferential under Title II. For purposes of this determination, section 210(a)(11)(H)(i)(II) of the Act provides that a transfer is made when the transfer is so perfected that a *bona fide* purchaser cannot acquire a superior interest, or if the transfer has not been so perfected before the FDIC is appointed as receiver, immediately before the date of appointment. This section could be read to apply the *bona fide* purchaser construct to all fraudulent transfers and to all preferential transfers pursuant to section 210(a)(11)(B) of the Dodd-Frank Act. By contrast, the Bankruptcy Code uses the *bona fide* purchaser construct only for fraudulent transfers and for preferential transfers of real property other than fixtures. Section 547(e)(1)(B) of the Bankruptcy Code provides that in the case of preferential transfers of personal property and fixtures, a transfer occurs at the time the transferee's interest in the transferred property is so perfected that a creditor on a simple contract cannot acquire a judicial lien [16] that is superior to the interest of the transferee. This section of the Proposed Rule makes clear that under section 210(a)(11)(H) of the Dodd-Frank Act, the FDIC could not, in a proceeding under Title II, avoid as preferential the grant of a security interest perfected by the filing of a financing statement in accordance with the provisions of the Uniform Commercial Code or other non-bankruptcy law where a security interest so perfected could not be avoided in a case under the Bankruptcy Code.

The second issue relates to the 30-day grace period, provided in section 547(e)(2) of the Bankruptcy Code, in which a security interest in transferred property may be perfected after such transfer has taken effect between the parties. Section 547(e)(2) of the Bankruptcy Code generally states that a transfer of property is made (i) when the transfer takes effect between the transferor and the transferee, if the transfer is perfected at or within 30 days after that time (or within 30 days of the transferor receiving possession of the property, in the case of certain purchase money security interests), (ii) when the transfer is perfected, if the transfer is perfected after the 30-day period, or (iii) if such transfer is not perfected before the later of the commencement of the bankruptcy case or 30 days after the transfer takes effect, immediately before the date when the bankruptcy petition is filed. Section 210(a)(11)(H) of the Dodd-Frank Act does not contain any express grace period. Consistent with the direction provided in section 209 of the Dodd-Frank Act to harmonize the regulations with otherwise applicable insolvency law to the extent possible, and to facilitate implementation of the avoidable transfer provisions of sections 210(a)(11)(A) and (B) of the Dodd-Frank Act, § 380.9 of the Proposed Rule includes provisions that would result in the following:[17]

- The avoidance provisions in section 210(a)(11) would apply the *bona fide* purchaser construct only in the case of fraudulent transfers under subparagraph (A) thereof and preferential transfers of real property (other than fixtures) under subparagraph (B) thereof;
- The avoidance provisions in section 210(a)(11)(B) would apply the "hypothetical lien creditor" construct as applied under section 547(e)(1)(B) of the Bankruptcy Code to any preferential transfers of personal property and fixtures; and
- the avoidance provisions in section 210(a)(11)(B) would apply the 30-day grace period as provided in section 547(e)(2) of the Bankruptcy Code, including any exceptions or qualifications contained therein.

Subpart A—Priorities

The Proposed Rule adds a Subpart A consisting of §§ 380.20–26 relating to the priorities of expenses and unsecured claims in the receivership of a covered financial company. Subpart A integrates all of the various provisions of the Dodd-Frank Act that determine the nature and priority of payments. First, the Subpart integrates the various statutory references to administrative expenses throughout the Act including identification of claims for amounts due to the United States, to ensure consistent application of those provisions. Second, the Subpart confirms the statutory preference for claims arising out of the loss of setoff rights over other general unsecured creditors if the loss of the setoff is due to the receiver's sale or transfer of an asset. Third, the Proposed Rule clarifies the payment of obligations of bridge financial companies and the rights of receivership creditors to remaining value. Finally, the Proposed Rule provides for the payment of post-insolvency interest on claims and for the determination of the index by which the limit applicable to certain claims for wages and benefits will be increased.

Subpart A of the Proposed Rule organizes and clarifies provisions throughout Title II of the Dodd-Frank Act dealing with the relative priorities of various creditors with claims against a failed financial company. These various provisions are based on the fundamental principle that any orderly liquidation should fairly treat similarly situated creditors and should ensure that the ultimate risk of loss for a failure of a systemically important financial company rests with the stockholders of the failed company. Although tools were put into place to ensure that temporary financing would be available to facilitate an *orderly* liquidation of the company to preserve its going concern value and to avoid cost-increasing disruptions of operations, the Dodd-Frank Act's resolution regime makes clear that there will be no more bailouts.

The responses to the request for broad comments in the October 19, 2010 Notice of Proposed Rulemaking raised a number of issues regarding the priorities of expenses and unsecured claims in a covered financial company receivership. Among the suggestions for future

[16] The term "judicial lien" is defined in section 101(36) of the Bankruptcy Code as a lien obtained by judgment, levy, sequestration or other legal or equitable process or proceeding. A similar, but abbreviated, formulation is found in section 547(e)(1)(B) of the Bankruptcy Code.

[17] These provisions conform with the letter dated December 29, 2010 from the FDIC's Acting General Counsel to the Securities Industry and Financial Markets Association ("SIFMA") and the American Securitization Forum available on SIFMA's Web site at *http://www.sifma.org/issues/item.aspx?id=22820.*

rulemakings, the topic of priorities of claims appeared often. One specific topic raised by several commenters included section 210(a)(12)(F) of the Dodd-Frank Act regarding the priority for creditors who are deprived of setoff rights. Another was the treatment of post-solvency interest, particularly with respect to oversecured creditors. Other comments requested that the FDIC clarify the relationship between a bridge financial company and creditors of the covered financial company. Subpart A of the Proposed Rule addresses these and other issues with respect to priorities. Other suggestions will be taken up in future rulemakings, and further comments are solicited in response to this Notice of Proposed Rulemaking.

Definitions

Section 380.20 of the Proposed Rule contains a definition of the term "allowed claim" which is used throughout Subpart A to mean a claim in the amount allowed by the FDIC as receiver in accordance with the procedures established in Subpart B of the Proposed Rule, or as determined by the final order of a court of competent jurisdiction. Definitions that apply throughout part 380 are found in § 380.1, including the definitions of "senior executive" (previously included in § 380.3), "compensation," and "director."

Priority of Unsecured Claims

Section 380.21 lists each of the eleven priority classes of claims established under the Dodd-Frank Act in the order of its relative priority. In addition to the specified priorities listed in section 210(b), the Proposed Rule integrates additional levels of priority established under section 210(c)(13)(d) (certain post-receivership debt); section 210(a)(13) (claims for loss of setoff rights); and section 210(a)(7)(D) (post insolvency interest). In order, the eleven classes of priority of claims are as follows:

(1) Claims with respect to post-receivership debt extended to the covered financial company where such credit is not otherwise available,

(2) Other administrative costs and expenses,

(3) Amounts owed to the United States,

(4) Wages, salaries and commissions earned by an individual within 6 months prior to the appointment of the receiver up to the amount of $11,725 (as adjusted for inflation),

(5) Contributions to employee benefit plans due with respect to such employees up to the amount of $11,725 (as adjusted for inflation) times the number of employees,

(6) Claims by creditors who have lost setoff rights by action of the receiver,

(7) Other general unsecured creditor claims,

(8) Subordinated debt obligations,

(9) Wages, salaries and commissions owed to senior executives and directors,

(10) Post-insolvency interest, which shall be distributed in accordance with the priority of the underlying claims, and (1) Distributions on account of equity to shareholders and other equity participants in the covered financial company.

Paragraph (b) of § 380.21 conforms the method of adjusting certain payments for inflation to the similar provisions of the Bankruptcy Code. Paragraph (c) provides that each class will be paid in full before payment of the next priority, and that if funds are insufficient to pay any class of creditors, the funds will be allocated among creditors in that class, *pro rata.*

This Proposed Rule establishes the general rule for the priority of claims of different classes of creditors. The Dodd-Frank Act provides for limited exceptions to this general rule of similar treatment for similarly-situated creditors, and any exception to the priorities established by this section must meet the statutory grounds for such an exception and the related regulations, including § 380.2 of this part.

Administrative Expenses

There are several references throughout the Act to the administrative expenses of the receiver. In section 201(a)(1) of the Dodd-Frank Act, the term is defined as including both "the actual, necessary costs and expenses" incurred by the receiver in liquidating a covered financial company, as well as "any obligations" that the FDIC as receiver determines are "necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company." Section 210(b)(2) of the Dodd-Frank Act provides that the receiver may grant first priority administrative expense status to unsecured debt obtained by the receiver in the event that credit is not otherwise available from commercial sources. Administrative expense priority is given to debt incurred by the FDIC as receiver in enforcing an existing contract to extend credit to the covered financial company under section 210(c)(13)(D). The Act also expressly confers administrative expense status on claims for payment for services performed under a service contract of the covered financial company after appointment of the receiver (§ 210(c)(7)(B)(ii)) and for payment of ongoing contractual rent for leases under which the covered financial company is lessee (§ 210(c)(4)) in harmony with bankruptcy practice as well as current practice under the FDI Act. In addition, pursuant to section 211(d)(4) of the Dodd-Frank Act, the expenses of the Inspector General of the FDIC incurred in connection with the conduct of an investigation of the liquidation of any covered financial company shall be funded as an administrative expense of the receiver of that covered financial company. Section 210(a)(15) of the Dodd-Frank Act expressly provides that damages for breach of a contract "executed or approved" by the FDIC as receiver for a covered financial company shall be paid as an administrative expense. Subparagraph 380.22(a)(3) clarifies that the phrase "executed or approved" includes only (i) contracts that are affirmatively entered into by the FDIC as receiver in writing after the date of its appointment, or (ii) contracts that pre-date the appointment of the FDIC as receiver that have been expressly approved in writing by the receiver. Damages for breach of a pre-receivership contract cannot attain administrative expense priority merely by the inaction of the receiver, such as the absence of a formal repudiation. Similarly, a contract inherited by the FDIC as receiver will not be deemed to have been approved based upon an alleged course of conduct by the receiver. Affirmative action by the receiver by formally approving the contract in writing is the prerequisite for administrative expenses treatment of damages for breach of a contract entered into by the covered financial company prior to appointment of the receiver.

In addition to consolidating all of these statutory references to the administrative expenses of the receiver into a single rule, proposed § 380.22(a) makes clear that expenses of the receiver that are necessary and appropriate to facilitate a smooth and orderly liquidation may be incurred by the FDIC pre-failure as well as after the appointment of the FDIC as receiver, and that all such expenses are administrative expenses of the receiver. The inclusion of both pre-failure and post-failure administrative expenses under the same standard is consistent with the treatment of administrative expenses under the FDI Act. *See* 12 CFR 360.4. In a bankruptcy case, the pre-petition expenses of preparing a petition must be paid prior to filing or await confirmation. All fees, compensation and expenses of liquidation and

administration shall be fixed by the FDIC. Such fees, compensation and expenses include amounts that the Corporation charges the receivership for services rendered by the FDIC.

Amounts Owed to the United States

Section 210(b)(1)(B) of the Dodd-Frank Act establishes a priority class for "amounts owed to the United States" immediately following the priority class for "administrative expenses of the receiver." Section 380.23 of the Proposed Rule establishes a definition for the phrase "amounts owed to the United States" and makes clear that it includes amounts advanced by the Department of Treasury or by any other department, agency or instrumentality of the United States, whether such amounts are advanced before or after the appointment of the receiver. For the sake of clarity, in addition to expressly listing advances by the FDIC for funding the orderly liquidation of the covered financial company pursuant to section 204(d)(4) as amounts owed to the United States, the Proposed Rule also expressly includes other sums advanced by departments, agencies and instrumentalities of the United States such as amounts owed to the FDIC for payments made pursuant to guarantees including payments to satisfy any guarantee of debt under the FDIC's Temporary Liquidity Guarantee Program, 12 CFR part 370, as well as unsecured accrued and unpaid taxes owed to the United States. Unsecured claims for net realized losses by a Federal reserve bank also are included, consistent with the mandate under section 1101 of the Act that requires such advances to have the same priority as amounts due to the United States Department of Treasury. The Dodd-Frank Act does not similarly specifically include government-sponsored entities such as FNMA, FHMLC or Federal Home Loan Banks, and the regulation therefore does not provide that obligations to those entities would be among the class of claims included among amounts owed to the United States under subsection 380.21(a)(3).

Although section 204(d)(4) of the Dodd-Frank Act provides that the FDIC has the power to take liens upon assets of the covered financial company to secure advances and guarantees made under that section, and provides that such advances will be repaid as administrative expenses "as appropriate," the Proposed Rule makes clear that the FDIC will treat all such amounts as amounts owed to the United States payable at the level of priority immediately following administrative expenses. This priority will apply regardless of whether or not such advance is treated as debt or equity on the books of the covered financial company. It will also apply whether or not such advance is secured by a lien under section 204(d)(4) in recognition of the FDIC's authority to impose assessments under section 210(o), which effectively guarantees repayment of such advances whether or not they are secured. Similarly, although the statute permits a distinction between advances for the purpose of funding administrative expenses (which are repayable at the administrative expense priority level) and other advances that are repaid as amounts owed to the United States, there will be little practical difference in the treatment of obligations for amounts advanced under section 204(d) of the Act because the power to impose additional assessments under section 210(o) assures that these amounts always will be repaid, thereby rendering unnecessary the need to track the actual use of such advances. As a practical matter, the only potential difference in the payment of a claim at the administrative expense priority under § 380.21(a)(2) and a claim at the priority class level for amounts owed to the United States under § 380.21(a)(3) would be the timing of the payment, and that potential differential would be addressed by the payment of interest at the post-insolvency rate as described in § 380.25.

Section 380.23(b) acknowledges that the United States may consent to subordination of its right to repayment of any specified debt or obligation provided that *all* unsecured claims of the United States shall, at a minimum, have a higher priority than equity or other liabilities of the covered financial company that count as regulatory capital. This is consistent with the mandatory requirement of section 206 of the Dodd-Frank Act that the shareholders of a covered financial company shall not receive payment until after all other claims are fully met.

Setoff

Section 210(a)(12) of the Dodd-Frank Act permits a creditor to offset certain qualified mutual debts between the covered financial company and the creditor. To allow the FDIC as receiver the flexibility to maximize the return from the disposition of assets of the covered financial company and to transfer assets to a bridge financial company so as to preserve the going concern value of the company, the Dodd-Frank Act specifically empowers the receiver to transfer assets of a covered financial company "free and clear of the setoff rights of any third party." Section 380.24 of the Proposed Rule addresses the claims of creditors who have lost a right of setoff due to the exercise of the receiver's right to sell or transfer assets of the covered financial company free and clear. Normally, a transfer of the assets without the claim will prevent setoff because the transfer destroys the mutuality of obligations that is the prerequisite of any ability to offset a claim directly against an obligation. The Dodd-Frank Act includes section 210(a)(12)(F) to provide a claimant with a preferred recovery as a general creditor and, thereby, achieve comparable protection. In the Proposed Rule, § 380.24 ensures that the claim of a creditor based upon the loss of an otherwise valid right of setoff due to a transfer of assets of the receiver will be paid at the level of priority immediately prior to all other general unsecured creditors.

Under the Dodd-Frank Act, the receiver is expressly authorized to sell assets free and clear of setoff claims, and the resulting claim for loss of those rights is expressly given a priority above other general unsecured creditors—but below administrative claims, amounts owed to the United States and certain employee-related claims. This preferential treatment should normally provide value to setoff claimants equivalent to the value of setoff under the Bankruptcy Code. While in bankruptcy setoff claims are functionally treated similarly to a security interest, the Bankruptcy Code treatment would severely impair the FDIC's ability to transfer assets of the covered financial company for value. The provisions of the Dodd-Frank Act and the implementing provisions in the Proposed Rule do provide adequate protection for the claimant in the context of the necessity for prompt transfer of the underlying asset. The Proposed Rule establishes that the FDIC as receiver will pay claimants for their loss of setoff rights in accordance with the express provisions of the Dodd-Frank Act.

Post-Insolvency Interest

Section 380.25 of the Proposed Rule establishes a post-insolvency interest rate, as required by section 210(a)(7)(D) of the Dodd-Frank Act. That rate is based on the coupon equivalent yield of the average discount rate set on the three-month U.S. Treasury Bill. Post-insolvency interest is computed quarterly and is not compounded. This is the rate that has been used by the FDIC in connection with claims under the FDI Act, and the same rate was chosen for the Dodd-Frank Act for ease of administration. In contrast, the

Bankruptcy Code provides in section 726(a)(5) for post-petition interest at the "legal rate;" however, in interpreting this provision, bankruptcy courts have not established a uniform post-petition interest rate. For the purpose of uniform treatment, the Proposed Rule computes post-insolvency interest in the same manner as provided for under the FDI Act pursuant to 12 CFR 360.7.

The Proposed Rule makes it clear that the post-insolvency interest is applied to the entire claim amount, which may include pre-receivership interest. In addition, if the claim is for damages arising out of repudiation of an obligation, the claim amount may include interest through the date of repudiation as required under section 210(c)(3)(D) of the Act. The Dodd-Frank Act does not contain a provision similar to section 506(b) of the Bankruptcy Code allowing interest at the contract rate and certain fees and expenses to be paid to oversecured creditors to the extent of the value of their collateral. Comment is sought on whether this is an area in which the FDIC should seek to harmonize orderly resolution practice with the Bankruptcy Code.

Transfers to Bridge Financial Companies

Section 380.26 of the Proposed Rule addresses and clarifies the treatment of assets and liabilities that are transferred to a bridge financial company by the FDIC as receiver by providing that any obligation that is expressly purchased or assumed by the bridge financial company will be paid by the bridge financial company in accordance with the terms of such obligation. The Proposed Rule similarly addresses the treatment of contracts or agreements expressly entered into by the bridge financial company. As an operating company, a bridge financial company will make payments on valid and enforceable obligations as they become due and not pursuant to a claims process. In short, valid and enforceable obligations purchased or assumed by the express agreement of the bridge financial company, as well as valid and enforceable obligations under contracts or agreements expressly agreed to by the bridge financial company will be paid in full as part of the normal operations of the bridge financial company.

Certain rights and obligations of the covered financial company will be transferred and assumed by the express agreement of the bridge financial company in the purchase and assumption agreement with the receiver for that covered financial company. The terms and conditions under which those rights and obligations are transferred and assumed will, of course, be governed by the terms of the purchase and assumption agreement. Thus, if an obligation is conditionally transferred to a bridge financial company subject to due diligence, put-back rights or other contingencies, the assumption of the obligation would be subject to these contingencies. Section 380.26 should not be read to eliminate express contingencies to the assumption of obligations nor any right to terminate an obligation or to put it back to the receiver of the covered financial company.

Several comments requested that a rule be promulgated to clarify the relationship between the bridge financial company and the creditors of the covered financial company. A bridge financial company will be a solvent company when it is formed in accordance with the express requirements of section 210(h)(5)(F) of the Act. The Dodd-Frank Act provides, however, that a bridge financial company has a finite existence pursuant to section 210(h)(12), and section 210(n) contemplates several means of disposing of the assets and liabilities of a bridge financial company and terminating its existence. A bridge financial company can be sold via merger, consolidation or a sale of stock, whereupon the bridge financial company's federal charter is terminated and any remaining assets liquidated. A bridge financial company also can be liquidated by a sale of its assets and assumption of its liabilities. If a bridge financial company is not liquidated, dissolved and terminated within two years of the date it is chartered (subject to not more than three one-year extensions), the FDIC shall act as receiver for the bridge financial company and shall wind up the affairs of the bridge financial company in conformity with the liquidation of covered financial companies under Title II of the Act, including the priorities and claims provisions. The Proposed Rule makes clear that the proceeds that remain following sale, liquidation and dissolution of the bridge financial company will be distributed to the FDIC as receiver for the covered financial company and will be made available to the creditors of the covered financial company after all administrative expenses and other creditor claims of the receiver for the bridge financial company have been satisfied.

Subpart B—Receivership Administrative Claims Process

The Proposed Rule also includes Subpart B, consisting of §§ 380.30–39 and §§ 380.50–55, to clarify how creditors can file claims against the receivership estate, how the FDIC as receiver will determine those claims, and how creditors can pursue their claims in Federal court.

Section 210(a)(2)–(5) of the Dodd-Frank Act provides for the resolution of claims against a covered financial company through an administrative process conducted by the FDIC as receiver. Generally, this process calls for creditors to file their claims with the receiver by a claims bar date. The receiver will determine whether to allow or disallow a claim no later than 180 days after the claim is filed (subject to any extension agreed to by the claimant). If the claim is disallowed, the claimant may seek *de novo* judicial review of the claim by filing a lawsuit (or continuing a pending lawsuit) within a prescribed 60-day time period. No court has jurisdiction to hear any claim against either the covered financial company or the receiver unless the claimant has first obtained a determination of the claim from the receiver.

Congress has established an exclusive, separate set of procedures for the presentation and determination of claims against a covered financial company or the FDIC as receiver. The statute is clear that the claimant must exhaust the administrative claims process as a jurisdictional prerequisite before any court can adjudicate the claim. While harmonization with other insolvency laws may be worthwhile and achievable in many other aspects of the orderly liquidation of a covered financial company, the FDIC cannot promulgate rules that materially diverge from or are inconsistent with the claims procedures set forth in the Dodd-Frank Act. Nevertheless, the FDIC believes that it is appropriate to look to the Bankruptcy Code to fill gaps in the Act, for example, where the Title II claims procedures lack specific directives regarding how the receiver should handle property that serves as collateral for a secured claim.

The administrative claims process of Title II is closely modeled after the claims process set forth in the FDI Act for receiverships of insured depository institutions. Like the FDI Act claims process, the Title II administrative process for claims against a covered financial company is designed to maximize efficiency while reducing the delay and additional costs that could be incurred in a different insolvency regime. Creditors' rights are protected by the availability of judicial review if the claim is disallowed, in whole or in part, by the receiver. This is a *de novo* determination of the claim by the court

on its merits and not a review of whether the receiver abused its discretion in disallowing the claim.

Because many parties may be unfamiliar with the resolution process for a failed insured depository institution generally and the administrative claims process in particular, the FDIC has undertaken in the Proposed Rule to explain certain important aspects of the claims process for a covered financial company receivership. While the Proposed Rule reflects all the statutory procedures, it also organizes those procedures in a step-by-step manner in order to promote greater understanding and clarity. In some instances, the Proposed Rule interprets the statutory procedures to address issues that are not addressed in the statute. For example, the statute does not provide notice procedures for claimants who are discovered after the claims bar date; the Proposed Rule fills this gap by providing for a 90-day claims filing period for such claimants. In other instances, the Proposed Rule supplements the statutory procedures in order to facilitate programs that have been instituted by the FDIC for greater efficiency, such as the electronic filing of claims.

The following sections appear under Subpart B of the Proposed Rule:

Receivership Administrative Claims Process

Section 380.30 of the Proposed Rule reflects the express authorization under the Dodd-Frank Act that the FDIC as receiver shall determine all claims in accordance with the statutory procedures and with the regulations promulgated by the FDIC. This section also clarifies that the administrative claims process will not apply to claims transferred to a bridge financial company or to third parties.

Definitions

Section 380.31 of the Proposed Rule defines the term "claim" to have the same meaning as in section 201(a)(4) of the Dodd-Frank Act, specifically, "any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." (This definition is generally consistent with the definition of the term in the Bankruptcy Code.) The Proposed Rule uses the definition of "claim" as set forth in section 201(a)(4) of the Act, but adds language to the definition to specify that a claim is a right to payment from either the covered financial company or the FDIC as receiver. The clarification that claims against the receiver are subject to the administrative claims process is necessary because section 210(a)(9)(D) divests a court of jurisdiction over claims against the receiver until the administrative claims process has been exhausted. If claims against the receiver were not first determined pursuant to the administrative claims process, no court would ever have jurisdiction over these claims. The terms "Corporation," "Corporation as receiver," and "receiver" are used interchangeably in the statute, and the Proposed Rule clarifies that such terms refer to the FDIC in its capacity as receiver of a covered financial company.

Claims Bar Date

Section 380.32 of the Proposed Rule reflects the statutory requirement that the FDIC as receiver establish a "claims bar date" by which creditors of the covered financial company are to file their claims with the receiver. The claims bar date must be identified in both the published notices and the mailed notices required by the statutory procedures. The Proposed Rule clarifies that the claims bar date is calculated from the date of the *first* published notice to creditors, not from the date of appointment of the receiver.

Notice Requirements

Section 380.33 of the Proposed Rule reiterates the statutory procedures for notice to creditors of the covered financial company. As required by the statute, upon its appointment as receiver of a covered financial company, the FDIC as receiver will promptly publish a first notice; subsequently, the receiver will publish a second and third notice one month and two months, respectively, after the first notice is published. The notices must inform creditors to present their claims to the receiver, together with proof, by no later than the claims bar date. The Proposed Rule provides that the notices shall be published in one or more newspapers of general circulation in the market where the covered financial company had its principal place of business. In recognition of the public's growing reliance on communication using the Internet as well as the prevalence of online commerce, the Proposed Rule provides that in addition to the published and mailed notices, the FDIC may post the notice on its public Web site.

In addition to the publication notice required by paragraph (a) of this section, the receiver must mail a notice that is similar to the publication notice to each creditor appearing on the books and records of the covered financial company. The mailed notice will be sent at the same time as the first publication notice to the last address of the creditor appearing on the books or in any claim filed by a claimant. The Proposed Rule provides that after sending the initial mailed notice required under paragraph (b), the FDIC may communicate by electronic media (such as e-mail) with any claimant who agrees to such means of communication.

Paragraph (d) of § 380.33 clarifies the treatment of creditors that are discovered after the initial publication and mailing has taken place. The FDIC as receiver shall mail a notice similar to the publication notice to any claimant not appearing on the books and records of the covered financial company no later than 30 days after the date that the name and address of such claimant is discovered. If the name and address of the claimant is discovered prior to the claims bar date, such claimant will be required to file the claim by the claims bar date. There may be instances when notice to the discovered claimant is sent immediately before the claims bar date, possibly giving the claimant insufficient time to prepare and file a claim before the claims bar date. In such a case, the claimant may invoke the statutory exception for late-filed claims set forth in section 210(a)(3)(C)(ii) and § 380.35(b)(3) of the Proposed Rule in order to overcome the claims bar date filing requirement.

When a claimant is discovered by the receiver after the claims bar date, the receiver must still provide mailed notice that is similar in content to the publication notice required by section 210(a)(2)(C). Such a discovered claimant cannot comply with a claims bar date that has already passed. Therefore, the Proposed Rule adopts a procedure for providing another time frame for filing a claim which parallels the statutory time frame mandated by section 210(a)(2)(B); *i.e.,* no earlier than 90 days from the first publication notice. Thus, although a claimant discovered after the claims bar date will be given 90 days to file its claim, the failure to file a claim by the end of that 90 day period will result in disallowance of the claim.

Procedures for Filing Claims

Section 380.34 of the Proposed Rule provides guidance to potential claimants regarding certain aspects of filing a claim. The FDIC as receiver has determined to provide creditors with instructions as to how to file a claim in several different formats. These will include providing FDIC contact information in the publication notice, providing a proof of claim form and filing instructions with the mailed

notice, and posting a link to the FDIC's on-line non-deposit claims processing Web site. A claim will be deemed filed with the receiver as of the date of postmark if the claim is mailed or as of the date of successful transmission if the claim is submitted by facsimile or electronically.

This section also confirms existing law that each individual claimant must submit its own claim and that no single party may assert a claim on behalf of a class of litigants. On the other hand, a trustee named or appointed in connection with a structured financial transaction or securitization is permitted to file a claim on behalf of the investors as a group because in such a case the trustee legally owns the claim.

The Proposed Rule reiterates the statutory provision that the filing of a claim constitutes the commencement of an action for purposes of any applicable statute of limitations and does not prejudice a claimant's right to continue any legal action filed prior to the date of the receiver's appointment. The Proposed Rule clarifies, however, that the claimant cannot continue its legal action until after the receiver determines the claim.

Determination of Claims

Section 380.35 of the Proposed Rule reflects the receiver's statutory authority to allow and disallow claims. The FDIC as receiver may disallow all or any portion of a claim, including a claim based on security, preference, setoff or priority, which is not proved to the receiver's satisfaction. Pursuant to the statutory directive, the receiver must disallow any claim that is filed after the claims bar date, subject to the statutory exception for late-filed claims. Under this exception, a late-filed claim will not be disallowed if (i) the claimant did not have notice of the appointment of the receiver in time to file by the claims bar date, and (ii) the claim is filed in time to permit payment by the receiver.

The Proposed Rule establishes that claims that do not accrue until after the claims bar date may not be disallowed by the receiver as untimely filed. Claims of this type may include claims based on the post-claims bar date repudiation of a contract, or acts or omissions of the receiver. In this regard, the Proposed Rule adopts the FDIC's interpretation of the application of the late-filed claim exception of the FDI Act to these types of claims. *See Heno* v. *Federal Deposit Insurance Corporation,* 20 F.3d 1204 (1st Cir. 1994). The Proposed Rule confirms that such claims will be deemed to satisfy the statutory late-filed claim exception. In addition, the Proposed Rule provides a definition of the phrase "filed in time to permit payment" to refer to a claim that is filed at any time before the FDIC as receiver makes a final distribution from the receivership of the covered financial company.

Decision Period

Section 380.36 of the Proposed Rule reflects that under the statute the receiver must notify a claimant of its decision to allow or disallow a claim prior to the 180th day after the claim is filed. The Proposed Rule also provides that the claimant and the receiver may extend the claims determination period by mutual agreement in writing. In accordance with the statute, the receiver must notify the claimant regarding its determination of the claim prior to the end of the extended claims determination period.

Notification of Determination

Section 380.37 of the Proposed Rule requires the receiver to notify the claimant of the determination of the claim as required by the statute. The notification may be mailed to the claimant as set forth in section 210(a)(3)(A). The receiver may use electronic media to notify claimants who file their claims electronically. If the receiver disallows the claim, the receiver's notification shall explain each reason for the disallowance and advise the claimant of the procedures required to file or continue an action in court. Consistent with the statute, the Proposed Rule provides that for purposes of triggering the procedures for seeking a judicial determination of the claim, a claim shall be deemed to be disallowed if the receiver does not notify the claimant prior to the end of the 180-day determination period or any extended claims determination period agreed to by the receiver and the claimant.

Procedures for Seeking Judicial Review of Disallowed Claim

Section 380.38 of the Proposed Rule implements the statutory procedures for a claimant to seek a judicial determination of its claim after the claim has been disallowed by the FDIC as receiver. The court's standard of judicial review would be a *de novo* consideration of the merits of the claim, not a judicial review of the receiver's determination of the claim. The statute states that a claimant may (i) file a lawsuit on its disallowed claim in the district court where the covered financial company's principal place of business is located, or (ii) continue a previously pending lawsuit. The Proposed Rule clarifies that if the claimant continues a pending action, the claimant may continue such action in the court in which the action was pending before the appointment of the receiver, resolving any uncertainty whether the action should be "continued" in the district court where the covered financial company's principal place of business is located. (In the case of an action pending in state court, the receiver would have the authority to remove the action to Federal court if it chose to do so.)

As provided by statute, § 308.38(c) of the Proposed Rule provides that the claimant has 60 days to commence or continue an action regarding the disallowed claim. The time period for commencing or continuing a lawsuit would be calculated, as applicable, from the date of the notification of disallowance, the end of the 180-day claims determination date, or the end of the extended determination date, if any. If a claimant fails to file suit on a claim (or continue a pre-receivership suit) before the end of the 60-day period, the claimant will have no further rights or remedies with respect to the claim. This time period is not subject to a tolling agreement between the FDIC and the claimant. The Proposed Rule reiterates the statutory provision that exhaustion of the administrative claims process is a jurisdictional prerequisite for any court to adjudicate a claim against a covered financial company or the receiver.

Secured Claims

Sections 380.50–55 of the Proposed Rule address the treatment of secured claims, which include covered bonds. The Dodd-Frank Act, like the Bankruptcy Code and the receivership provisions of the FDI Act, provides that a claimant holding a security interest in property is entitled to the value of its collateral up to the amount of the claim. Under section 210(a)(3)(D)(ii) of the Act, a claim that is secured by any property of the covered financial company may be treated as an unsecured claim to the extent that the claim exceeds the fair market value of the property, effectively bifurcating the claim into a secured component ("the secured claim") and an unsecured component. The unsecured component is treated like an unsecured claim and paid along with other unsecured claims. The Dodd-Frank Act is less specific about the treatment of the secured claim, however. Section 210(a)(1)(D) provides that subject to all legally enforceable security interests (and security entitlements), the receiver shall take steps to realize upon the assets of the covered financial company, including through the sale of assets. The

Proposed Rule attempts to clarify how the receiver will recognize and treat secured claims during this process.

Section 380.50 of the Proposed Rule reflects the receiver's authority in section 210(a)(3)(D)(ii) of the Dodd-Frank Act to recognize a claim as secured to the extent of the value of the collateral. The Proposed Rule further provides that in reviewing a secured claim, the receiver will determine the amount of the claim, the relative priority of the security interest, whether the claimant's security interest is legally enforceable and perfected, and the fair market value of the property or other asset that is subject to the security interest.

Section 380.51 of the Proposed Rule relates to two provisions of the Dodd-Frank Act that affect secured claimants, subparagraphs 210(c)(13)(C) and (q)(1)(B). Subparagraph 210(c)(13)(C) precludes most secured claimants from exercising rights against the pledged collateral during the 90-day period after the FDIC is appointed receiver of a covered financial company without the consent of the FDIC as receiver. The provision also requires the receiver's consent during this 90-day period before a creditor can exercise any right to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or obtain possession of or exercise control over any property of the covered financial company, or affect any contractual rights of the covered financial company. Subparagraph 210(q)(1)(B) affects claimants who are secured by a mortgage or other lien by providing that no property of the FDIC as receiver shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the receiver. Such property includes the property of the covered financial company in receivership. The Proposed Rule establishes that the FDIC may grant consent under subparagraphs 210(c)(13)(C) or (q)(1)(B) to a secured creditor to obtain possession of or exercise control over property of the covered financial company that serves as its collateral, or to foreclose upon or sell such collateral. The Proposed Rule sets forth several important limitations on consents that may be granted by the FDIC including that any consent is solely at the discretion of the FDIC and that such consent does not constitute a waiver, relinquishment or limitation on any rights, powers or remedies granted to the FDIC in any capacity. Furthermore, the consent right is not assignable to a purchaser of property from the FDIC.

Section 380.52 of the Proposed Rule confirms that under section 210(c)(12)(A) of the Dodd-Frank Act, the authority of the FDIC to repudiate a contract of the covered financial company will not have the effect of avoiding any legally enforceable and perfected security interests in the property (except those avoidable as fraudulent or preferential transfers under section 210(a)(11)). The Proposed Rule further provides that after repudiation the security interest will no longer secure the contractual obligation that was repudiated but will instead secure a claim for repudiation damages. Accordingly, the receiver may consent to the claimant's liquidation of the collateral and application of the proceeds to the claim for repudiation damages.

Section 380.53 of the Proposed Rule implements the requirement under section 210(a)(5) of the Dodd-Frank Act that the FDIC establish an expedited claims determination procedure for secured creditors who allege that they will suffer irreparable injury if they are compelled to follow the ordinary claims process. The expedited claims procedure established by the Proposed Rule tracks the statutory procedures and time frames set forth in section 210(a)(5). Under such procedures, the receiver has 90 days to review the secured claim, and the secured creditor has 30 days to file or continue an action for judicial review of the claim at the earlier of the end of the 90-day period or the date the receiver denies all or a portion of the claim.

Section 380.54 of the Proposed Rule addresses how the receiver may treat property that serves as collateral for a secured claim. A number of comments were received on the topic of the receiver's valuation and disposition of collateral, and this section of the Proposed Rule addresses this issue. Section 380.54 of the Proposed Rule provides an alternative to the voluntary surrender of collateral by the receiver set forth in § 380.51 by providing that the receiver may sell the collateral. The receiver will then consent to the security interest's attachment to the proceeds of the sale. The receiver may want to sell the collateral if its value exceeds the amount of the claim it secures. In the event of a sale by the receiver, the secured creditor will be permitted to bid and acquire the collateral by offsetting the amount of its claim against the purchase price of the collateral.

Section 380.55 of the Proposed Rule provides that the FDIC as receiver may redeem the property of the covered financial company from a lien held by a secured creditor by paying the creditor in cash the fair market value of the property up to the value of its lien. The receiver's ability to exercise this power may be important when the use or possession of the property would be necessary to the orderly liquidation of the covered financial company.

III. Solicitation of Comments

The FDIC solicits comments on all aspects of the Proposed Rule. The FDIC also solicits responses to the following questions:

1. The FDIC has proposed a two-year period for applying the 85 percent consolidated revenue test. Is there another more appropriate timeframe that the FDIC should use to determine whether a company meets the 85 percent consolidated revenue test for the purposes of Title II?

2. Is there a more appropriate definition of "applicable accounting standards" than that used in the Proposed Rule?

3. The Proposed Rule includes a rule of construction regarding investments that are not consolidated. Is this rule of construction appropriate?

4. The Proposed Rule includes a rule of construction regarding *de minimis* investments. Is there a more appropriate approach to calculating and accounting for revenues that are derived from such *de minimis* investments?

5. Section 380.7 of the Proposed Rule establishes standards for a determination that a senior executive or director is substantially responsible for the failure of a covered financial company. Under the Proposed Rule, the loss to the financial condition of the covered financial company must have materially contributed to the failure of the covered financial company. The FDIC is considering the use of additional qualitative and quantitative benchmarks to establish that the loss materially contributed to the failure of the covered financial company. Financial indicators under consideration as possible benchmarks are assets, net worth and capital, and the percentage or magnitude of loss associated with these benchmarks that would establish a material loss and trigger substantial responsibility. The FDIC solicits comments on these and other potential benchmarks that may be used to effectively evaluate loss.

6. Section 380.8 of the Proposed Rule generally establishes the criteria for determining whether a company is predominantly engaged in activities that are financial in nature or incidental thereto. Should § 380.8 of the Proposed Rule be limited so that it only encompasses entities that, individually

or on a consolidated basis, are eligible under section 102 of the Dodd-Frank Act for designation as nonbank financial companies supervised by the Board of Governors?

7. Should § 380.8 of the Proposed Rule be limited to companies that, individually or on a consolidated basis, are designated as systemically important under the Dodd-Frank Act?

8. In what ways can the definition of administrative expenses under the Dodd-Frank Act be further harmonized with bankruptcy law and practice? Section 503(b)(4) of the Bankruptcy Code expressly provides for the payment of attorneys' and accountants' fees and expenses. Is there a need for a comparable provision in these rules, in light of the procedures for administration of the claims process described in the Proposed Rule?

9. Should "amounts due to the United States" be limited to obligations backed by the full faith and credit of the United States? To the extent that amounts due to the United States includes amounts that are not obligations issued by the FDIC to the Secretary of the Department of Treasury under the Dodd-Frank Act, how will the additional assessments authorized by section 210(o) of the Act be applied?

10. How should the value of lost setoff rights be determined?

11. How do the differences in the post insolvency interest rules contained in § 380.25 and those established under bankruptcy law and practice materially affect creditors? How would the provisions of section 506(b) of the Bankruptcy Code allowing certain fees and expenses to be paid to oversecured creditors to the extent of the value of their collateral be implemented in an orderly resolution under the Dodd-Frank Act, if it is applicable? What would be the impact on creditors if a similar rule is adopted under the Dodd-Frank Act? Or if one is not adopted?

12. What, if any, additional provisions should be included in the Proposed Rule regarding the administrative process for the determination of claims?

13. Proposed section 380.33 requires the FDIC to publish a notice to creditors to present their claims and specifies that the notice shall be published in one or more newspapers of general circulation where the covered financial company has its principal place or places of business. If the covered financial company is a multi-national organization, how should the principal place(s) of business be determined? Should a publication notice be published in each country in which the covered financial company does business?

14. In the event that publication notices are published in other countries, what standards should be applied to identify appropriate "newspapers of general circulation" to satisfy this regulatory requirement?

15. Should the consent provisions of subparagraphs 210(c)(13)(C) and (q)(1)(B) of the Act be interpreted as not applying to a secured creditor who has possession of or control over collateral before the appointment of the receiver pursuant to a security arrangement?

16. What, if any, additional provisions should be included in the Proposed Rule governing the treatment of secured claims and property that serves as security? Specifically, are there any additional provisions that are necessary or appropriate regarding obtaining consent from the receiver to exercise rights against the collateral, and the sale or redemption of collateral by the receiver? Should collateral be valued at the time it is surrendered, sold, or redeemed by the receiver, or some other time? Is it necessary to provide that after repudiation a security interest will no longer secure the contractual repayment obligation but will instead secure any claims for repudiation damages?

17. What, if any, provisions should be changed or added to the expedited relief procedures for secured creditors who allege irreparable injury if the ordinary claims process is followed?

IV. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

The Proposed Rule would not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (U.S.C. 601 *et seq.*) requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. (5 U.S.C. 603(a)). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Proposed Rule will not have a significant economic impact on a substantial number of small entities. The Proposed Rule will clarify rules and procedures for the liquidation of a failed systemically important financial company, which will provide internal guidance to FDIC personnel performing the liquidation of such a company and will address any uncertainty in the financial system as to how the orderly liquidation of such a company would operate. As such, the Proposed Rule will not have a significant economic impact on small entities.

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

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

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Proposed Rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 380

Holding companies, Insurance companies.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends title 12 part 380 of the Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

1. The authority citation for part 380 continues to read as follows:

Authority: 12 U.S.C. 5301 *et seq.*

2. Revise 380.1 by to read as follows:

§ 380.1 Definitions.

(a) For purposes of this part, the following terms are defined as follows:

(1) The term "bridge financial company" means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered financial company.

(2) The term "Corporation" means the Federal Deposit Insurance Corporation.

(3) The term "covered financial company" means:

(i) A financial company for which a determination has been made under 12 U.S.C. 5383(b) and

(ii) Does not include an insured depository institution.

(4) The term "covered subsidiary" means a subsidiary of a covered financial company, other than:

(i) An insured depository institution;

(ii) An insurance company; or

(iii) A covered broker or dealer.

(5) The term "insurance company" means any entity that is:

(i) Engaged in the business of insurance;

(ii) Subject to regulation by a State insurance regulator; and

(iii) Covered by a State law that is designed to specifically deal with the rehabilitation, liquidation or insolvency of an insurance company.

(b) The following words shall be defined as follows:

(1) *Compensation.* The word compensation means any direct or indirect financial remuneration received from the covered financial company, including, but not limited to, salary; bonuses; incentives; benefits; severance pay; deferred compensation; golden parachute benefits; benefits derived from an employment contract, or other compensation or benefit arrangement; perquisites; stock option plans; post-employment benefits; profits realized from a sale of securities in the covered financial company; or any cash or non-cash payments or benefits granted to or for the benefit of the senior executive or director.

(2) *Director.* The word director means any director of a covered financial company with authority to vote on matters before the board of directors.

(3) *Senior executive.* The term senior executive has the meaning set forth in 12 CFR 380.3(a)(2).

3. Add §§ 380.7, 380.8, and 380.9 to read as follows:

§ 380.7 Recoupment of compensation from senior executives and directors.

(a) *Substantially Responsible.* The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply. A senior executive or director shall be deemed to be substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act if:

(1) He or she failed to conduct his or her responsibilities with the requisite degree of skill and care required by that position, and

(2) As a result, individually or collectively, caused a loss to the covered financial company that materially contributed to the failure of the covered financial company under the facts and circumstances.

(b) *Presumptions.* The following presumptions shall apply for purposes of assessing whether a senior executive or director is substantially responsible for the failed condition of a covered financial company:

(1) It shall be presumed that a senior executive or director is substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act under any of the following circumstances:

(i) The senior executive or director served as the chairman of the board of directors, chief executive officer, president, chief financial officer, or in any other similar role regardless of his or her title if in this role he or she had responsibility for the strategic, policymaking, or company-wide operational decisions of the covered financial company prior to the date that it was placed into receivership under the orderly liquidation authority of the Dodd-Frank Act;

(ii) The senior executive or director is adjudged liable by a court or tribunal of competent jurisdiction for having breached his or her duty of loyalty to the covered financial company;

(iii) The senior executive was removed from the management of the covered financial company under 12 U.S.C. 5386(4); or

(iv) The director was removed from the board of directors of the covered financial company under 12 U.S.C. 5386(5).

(2) The presumption under paragraph (b)(1)(i) of this section may be rebutted by evidence that the senior executive or director performed his or her duties with the requisite degree of skill and care required by that position. The presumptions under paragraphs (b)(1)(ii),)(iii) and (iv) of this section may be rebutted by evidence that the senior executive or director did not cause a loss to the covered financial company that materially contributed to the failure of the covered financial company under the facts and circumstances.

(3) The presumptions do not apply to:

(i) A senior executive hired by the covered financial company during the two years prior to the Corporation's appointment as receiver to assist in preventing further deterioration of the financial condition of the covered financial company; or

(ii) A director who joined the board of directors of the covered financial company during the two years prior to the Corporation's appointment as receiver under an agreement or resolution to assist in preventing further deterioration of the financial condition of the covered financial company.

(4) Notwithstanding that the presumption does not apply under paragraphs (b)(3)(i) and (ii) of this section, the Corporation as receiver still may pursue recoupment of compensation from a senior executive or director in paragraphs (b)(3)(i) and (ii) of this section if they are substantially responsible for the failed condition of the covered financial company.

(c) *Actions by the Corporation as receiver for Losses to the Covered Financial Company.* Pursuing recoupment of compensation under this section shall not in any way limit or impair the ability of the Corporation as receiver to pursue any other claims or causes of action it may have against senior executives and directors of the covered financial company for losses they cause to the covered financial company in the same or separate actions.

§ 380.8 Predominantly engaged in activities that are financial or incidental thereto.

(a) For purposes of sections 201(a)(11) and 201(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381(a)(11) and (b)) and this section, a company is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if:

(1) At least 85 percent of the total consolidated revenues of such company (determined in accordance with applicable accounting standards) for either of its two most recent fiscal years were derived, directly or indirectly, from financial activities, or

(2) Based upon all of the relevant facts and circumstances, the Corporation determines that the consolidated revenues of the company from financial activities constitute 85 percent or more of the total consolidated revenues of the company.

(b) For purposes of paragraph (a) of this section, the following definitions apply:

(1) The term "total consolidated revenues" means the total gross

revenues of the company and all entities subject to consolidation by the company for a fiscal year.

(2) The term "financial activity" means:

(i) Any activity, wherever conducted, described in 12 CFR 225.86 or any successor regulation;

(ii) Ownership or control of one or more depository institutions; or

(iii) Any other activity, wherever conducted, determined by the Board of Governors of the Federal Reserve System, in consultation with the Secretary of the Treasury, under section 4(k)(1)(A) of the Bank Holding Company Act (12 U.S.C. 1843(k)(1)(A)) to be financial in nature or incidental to a financial activity.

(3) The term "applicable accounting standards" means the accounting standards utilized by the company in the ordinary course of business in preparing its consolidated financial statements, provided that those standards are:

(i) U.S. generally accepted accounting principles,

(ii) International Financial Reporting Standards, or

(iii) Such other accounting standards that the FDIC determines to be appropriate.

(c) *Effect of other authority.* Any activity described in paragraph (b)(2) of this section is considered financial in nature or incidental thereto for purposes of this section regardless of whether—

(1) A bank holding company (including a financial holding company or a foreign bank) may be authorized to engage in the activity, or own or control shares of a company engaged in such activity, under any other provisions of the BHC Act or other Federal law including, but not limited to, section 4(a)(2), section 4(c)(5), section 4(c)(6), section 4(c)(7), section 4(c)(9), or section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(a)(2), (c)(5), (c)(6), (c)(7), (c)(9), or (c)(13)) and the Board's implementing regulations; or

(2) Other provisions of Federal or state law or regulations prohibit, restrict, or otherwise place conditions on the conduct of the activity by a bank holding company (including a financial holding company or foreign bank) or bank holding companies generally.

(d) *Rules of construction.* For purposes of determining whether a company is predominantly engaged in financial activities under this section, the following rules shall apply—

(1) Investments that are not consolidated. Except as provided in paragraph (d)(2) of this section, revenues derived from an equity investment by the company in another company, the financial statements of which are not consolidated with those of the company under applicable accounting standards, shall be treated as revenues derived from financial activities, if the other company is predominantly engaged in financial activities as defined in paragraph (a)(1) of this section.

(2) Treatment of *de minimis* investments. A company may treat revenues derived from an equity investment by the company in another company as revenues not derived from financial activities, regardless of the type of activities conducted by the other company, if

(i) The company's aggregate ownership interest in the other company constitutes less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the other company;

(ii) The financial statements of the other company are not consolidated with those of the company under applicable accounting standards;

(iii) The company's investment in the other company is not held in connection with the conduct by the company or any of its subsidiaries of an activity that is considered to be financial in nature or incidental thereto for purposes of this section (such as, for example, investment advisory activities or merchant banking activities);

(iv) The other company is not—

(A) A depository institution or a subsidiary of a depository institution;

(B) A bank holding company or savings and loan holding company;

(C) A foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7));

(D) Any of the following entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*)—

(*1*) A broker or dealer;

(*2*) A clearing agency;

(*3*) A nationally recognized statistical rating organization;

(*4*) A transfer agent;

(*5*) An exchange registered as a national securities exchange; or

(*6*) A security-based swap execution facility, security-based swap data repository, or security-based swap dealer;

(E) An investment advisor registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(F) Any of the following entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*)—

(*1*) A futures commission merchant;

(*2*) A commodity pool operator;

(*3*) A commodity trading advisor;

(*4*) An introducing broker;

(*5*) A derivatives clearing organization;

(*6*) A retail foreign exchange dealer; or

(*7*) A swap execution facility, swap data repository, or swap dealer.

(G) A board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); or

(H) An insurance company subject to supervision by a state or foreign insurance authority; and

(v) The aggregate dollar amount of revenues treated by the company as not financially related under this paragraph (d)(2) of this section does not exceed five percent of the total consolidated financial revenues of the company in that year.

§ 380.9 Treatment of fraudulent and preferential transfers.

(a) *Coverage.* This section shall apply to all receiverships in which the FDIC is appointed as receiver under 12 U.S.C. 5382(a) or 5390(a)(1)(E) of a covered financial company or a covered subsidiary, respectively, as defined in 12 U.S.C. 5381(a)(8) and (9).

(b) *Avoidance Standard for Transfer of Property.* (1) In applying 12 U.S.C. 5390(a)(11)(H)(i)(II) to a transfer of property for purposes of 12 U.S.C. 5390(a)(11)(A), the Corporation, as receiver of a covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall determine whether the transfer has been perfected such that a *bona fide* purchaser from such covered financial company or such covered subsidiary, as applicable, against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee.

(2) In applying 12 U.S.C. 5390(a)(11)(H)(i)(II) to a transfer of real property, other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, for purposes of 12 U.S.C. 5390(a)(11)(B), the Corporation, as receiver of a covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall determine whether the transfer has been perfected

such that a *bona fide* purchaser from such covered financial company or such covered subsidiary, as applicable, against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee. For purposes of this section, the term fixture shall be interpreted in accordance with U.S. Federal bankruptcy law.

(3) In applying 12 U.S.C. 5390(a)(11)(H)(i)(II) to a transfer of a fixture or property, other than real property, for purposes of 12 U.S.C. 5390(a)(11)(B), the Corporation, as receiver of a covered financial company or a covered subsidiary which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall determine whether the transfer has been perfected such that a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee, and the standard of whether the transfer is perfected such that a *bona fide* purchaser cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee of such property shall not apply to any such transfer under this subparagraph (b)(3).

(c) *Grace period for perfection.* In determining when a transfer occurs for purposes of 12 U.S.C. 5390(a)(11)(B), the Corporation, as receiver of a covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall apply the following standard:

(1) Except as provided in paragraph (c)(2) of this section, a transfer shall be deemed to have been made:

(i) At the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in paragraph (c)(1)(ii) of this section;

(ii) At the time such transfer takes effect between the transferor and the transferee, with respect to a transfer of an interest of the transferor in property that creates a security interest in property acquired by the transferor—

(A) To the extent such security interest secures new value that was:

(*1*) Given at or after the signing of a security agreement that contains a description of such property as collateral;

(*2*) Given by or on behalf of the secured party under such agreement;

(*3*) Given to enable the transferor to acquire such property; and

(*4*) In fact used by the transferor to acquire such property; and

(B) That is perfected on or before 30 days after the transferor receives possession of such property;

(iii) At the time such transfer is perfected, if such transfer is perfected after the 30-day period described in paragraph (c)(1)(i) or (ii) of this section, as applicable; or

(iv) Immediately before the appointment of the Corporation as receiver of a covered financial company or a covered subsidiary which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), if such transfer is not perfected at the later of—

(A) The earlier of the date of the filing, if any, of a petition by or against the transferor under Title 11 of the United States Code and the date of the appointment of the Corporation, as receiver of such covered financial company or such covered subsidiary; or

(B) 30 days after such transfer takes effect between the transferor and the transferee.

(2) For the purposes of this paragraph (c), a transfer is not made until the covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), has acquired rights in the property transferred.

(d) *Limitations.* The provisions of this section do not act to waive, relinquish, limit or otherwise affect any rights or powers of the Corporation in any capacity, whether pursuant to applicable law or any agreement or contract.

§ 380.10–380.19 [Reserved]

4. Add reserved §§ 380.10 through 380.19;

5. Add subpart A, consisting of §§ 380.20 through 380.29, to read as follows:

Subpart A—Priorities

Sec.

380.20 Definitions.
380.21 Priorities.
380.22 Administrative expenses of the receiver.
380.23 Amounts owed to the United States.
380.24 Priority of claims arising out of loss of setoff rights.
380.25 Post-insolvency interest.
380.26 Effect of transfer of assets and obligations to a bridge financial company.
380.27–380.29 [Reserved]

§ 380.20 Definitions.

Allowed claim. The term *allowed claim* means a claim against the receivership that is allowed by the Corporation as receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

§ 380.21 Priorities.

(a) Unsecured claims against the covered financial company or the receiver that are proved to the satisfaction of the Corporation as receiver for the covered financial company shall be paid in the following order of priority:

(1) Repayment of debt incurred by or credit obtained by the Corporation as receiver for a covered financial company, provided that the Corporation as receiver has determined that it is otherwise unable to obtain unsecured credit for the covered financial company from commercial sources.

(2) Administrative expenses of the receiver, as defined in § 380.22, other than those described in paragraph (a)(1) of this subsection.

(3) Any amounts owed to the United States, as defined in § 380.23.

(4) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in paragraph (a)(9) of this subsection), but only to the extent of $11,725 for each individual (as adjusted for inflation in accordance with paragraph (b) of this section) earned not later than 180 days before the date of appointment of the receiver.

(5) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the receiver, to the extent of the number of employees covered by each such plan multiplied by $11,725 (as adjusted for inflation in accordance with paragraph (b) of this section); less the sum of:

(i) The aggregate amount paid to such employees under paragraph (a)(4) of this section, plus

(ii) The aggregate amount paid by the Corporation as receiver on behalf of such employees to any other employee benefit plan.

(6) Any amounts due to creditors who have an allowed claim for loss of setoff rights as described in § 380.24.

(7) Any other general or senior liability of the covered financial company (which is not a liability described under paragraphs (a)(8), (9) or (11) of this section).

(8) Any obligation subordinated to general creditors (which is not an obligation described under paragraph (a)(9) or (11) of this section).

(9) Any wages, salaries, or commissions, including vacation,

severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

(10) Post-insolvency interest in accordance with § 380.25, provided that interest shall be paid on allowed claims in the order of priority of the claims set forth in paragraphs (a)(1) through (9) of this section.

(11) Any amount remaining shall be distributed to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company, in proportion to their relative equity interests.

(b) All payment under subparagraphs (a)(4) and (5) of this section shall be as adjusted for inflation in the same manner that claims under 11 U.S.C. 507(a)(1)(4) are adjusted for inflation by the Judicial Conference of the United States pursuant to 11 U.S.C. 104.

(c) All unsecured claims of any category or priority described in paragraphs (a)(1) through (10) of this section shall be paid in full or provision made for such payment before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a particular category or priority of claims in full, then distributions to creditors in such category or priority shall be made *pro rata.*

§ 380.22 Administrative expenses of the receiver.

(a) The term "administrative expenses of the receiver" includes those actual and necessary pre- and post-failure costs and expenses incurred by the Corporation as receiver in liquidating the covered financial company; together with any obligations that the Corporation as receiver for the covered financial company determines to be necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company. Administrative expenses of the Corporation as receiver for a covered financial company include:

(1) Contractual rent pursuant to an existing lease or rental agreement accruing from the date of the appointment of the Corporation as receiver until the later of:

(i) The date a notice of the dissafirmance or repudiation of such lease or rental agreement is mailed, or

(ii) The date such disaffirmance or repudiation becomes effective; provided that the lesser of such lease is not in default or breach of the terms of the lease.

(2) Amounts owed pursuant to the terms of a contract for services performed and accepted by the receiver after the date of appointment of the receiver up to the date the receiver repudiates, terminates, cancels or otherwise discontinues such contract or notifies the counterparty that it no longer accepts performance of such services;

(3) Amounts owed under the terms of a contract or agreement executed in writing and entered into by the Corporation as receiver for the covered financial company after the date of appointment, or any contract or agreement entered into by the covered financial company before the date of appointment of the Corporation as receiver that has been expressly approved in writing by the Corporation as receiver after the date of appointment; and

(4) Expenses of the Inspector General of the Corporation incurred in carrying out its responsibilities under 12 U.S.C. 5391(d).

(b) Obligations to repay any extension of credit obtained by the Corporation as receiver through enforcement of any contract to extend credit to the covered financial company that was in existence prior to appointment of the Corporation as receiver pursuant to 12 U.S.C. 5390(c)(13)(D) shall be treated as administrative expenses of the receiver. Other unsecured credit extended to the receivership shall be treated as administrative expenses except with respect to debt incurred by or credit obtained by the Corporation as receiver for a covered financial company as described in § 380.21(a)(1).

§ 380.23 Amounts owed to the United States.

(a) The term "amounts owed to the United States" as used in § 380.21(a)(3) of this subpart includes all amounts due to the United States or any department, agency or instrumentality of the United States government, without regard for whether such amount is included as debt or capital on the books and records of the covered financial company. Such amounts shall include obligations incurred before and after the appointment of the receiver. Without limitation, "amounts owed to the United States" include all of the following, which all shall have equal priority under § 380.21(a)(3):

(1) Amounts owed to the Corporation for any extension of credit by the Corporation, including any amounts made available under 12 U.S.C. 5384(d), whether such extensions of credit are secured or unsecured;

(2) Unsecured amounts paid or payable by the Corporation pursuant to its guarantee of any debt issued by the covered financial company under the Temporary Liquidity Guaranty Program, 12 CFR part 370, any widely available debt guarantee program authorized under 12 U.S.C. 5612, or any other debt or obligation of any kind or nature that is guaranteed by the Corporation;

(3) Amounts owed to the Department of Treasury on account of unsecured tax liabilities of the covered financial company that directly result from the income or activities of the covered financial company; and

(4) The amount of any unsecured debt owed to a Federal reserve bank.

(b) The United States may, in its sole discretion, consent to subordinate the repayment of any amount due to the United States to any other obligation of the covered financial company provided that such consent shall be in writing by the appropriate Department, agency or instrumentality and shall specify the particular debt, obligation or other amount to be subordinated including the amount thereof and shall reference this section or 12 U.S.C. 5390(b)(1); and provided further that unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital on the books and records of the covered financial company.

§ 380.24 Priority of claims arising out of loss of setoff rights.

(a) Notwithstanding any right of any creditor to offset a mutual debt owed by such creditor to any covered financial company that arose before the date of appointment the receiver against a claim of such creditor against the covered financial company, the Corporation acting as receiver for the covered financial company may sell or transfer any assets of the covered financial company to a bridge financial company or to a third party free and clear of any such rights of setoff.

(b) If the Corporation as receiver sells or transfers any asset free and clear of the setoff rights of any party, such party shall have a claim against the receiver in the amount of the value of such setoff established as of the date of the sale or transfer of such assets, provided that the setoff rights meet all of the criteria established under 12 U.S.C. 3590(a)(12).

(c) Any allowed claim pursuant to 12 U.S.C. 5390(a)(12) shall be paid prior to any other general or senior liability of the covered financial company described in § 380.21(a)(7) of this

subpart. In the event that the setoff amount is less than the amount of the allowed claim, the balance of the allowed claim shall be paid at the otherwise applicable level of priority for such category of claim under § 380.21.

§ 380.25 Post-insolvency interest.

(a) *Date of accrual.* Post-insolvency interest shall be paid at the post-insolvency interest rate calculated on the principal amount of an allowed claim from the later of:

(1) The date of the appointment of the Corporation as receiver for the covered financial company; or

(2) In the case of a claim arising or becoming fixed and certain after the date of the appointment of the receiver, the date such claim arises or becomes fixed and certain.

(b) *Interest rate.* Post-insolvency interest rate shall equal, for any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter. Post-insolvency interest shall be computed quarterly and shall be computed using a simple interest method of calculation.

(c) *Principal amount.* The principal amount of an allowed claim shall be the full allowed claim amount, including any interest that may have accrued to the extent such interest is included in the allowed claim.

(d) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction of the principal amount of all creditor claims set forth in § 380.21(a)(1) through (9) of this subpart and prior to any distribution pursuant to § 380.21(a)(11).

(2) Post-insolvency interest distributions shall be made at such time as the Corporation as receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding principal amount of an allowed claim, as reduced from time to time by any interim distributions on account of such claim by the Corporation as receiver.

§ 380.26 Effect of transfer of assets and obligations to a bridge financial company.

(a) The purchase of any asset or assumption of any asset or liability of a covered financial company by a bridge financial company, through the express agreement of such bridge financial company, constitutes assumption of the contract or agreement giving rise to such asset or liability. Such contracts or agreements, together with any contract the bridge financial company may through its express agreement enter into with any other party, shall become the obligation of the bridge financial company from and after the effective date of the purchase, assumption or agreement, and the bridge financial company shall have the right and obligation to observe, perform and enforce their terms and provisions. In the event that the Corporation shall act as receiver of the bridge financial company any claim arising out of any breach of such contract or agreement by the bridge financial company shall be paid as an administrative expense of the receiver of the bridge financial company.

(b) In the event that the Corporation as receiver of a bridge financial company shall act to dissolve the bridge financial company, it shall wind up the affairs of the bridge financial company in conformity with the laws, rules and regulations relating to the liquidation of covered financial companies, including the laws, rules and regulations governing priorities of claims, subject however to the authority of the Corporation to authorize the bridge financial company to obtain unsecured credit or issue unsecured debt with priority over any or all of the other unsecured obligations of the bridge financial company, provided that unsecured debt is not otherwise generally available to the bridge financial company.

(c) Upon the final dissolution or termination of the bridge financial company whether following a merger or consolidation, a stock sale, a sale of assets, or dissolution and liquidation at the end of the term of existence of such bridge financial company, any proceeds that remain after payment of all administrative expenses of the bridge financial company and all other claims against such bridge financial company will be distributed to the receiver for the related covered financial company.

§§ 380.27–380.29 [Reserved]

6. Add subpart B, consisting of §§ 380.30 through 380.55, to read as follows:

Subpart B—Receivership Administrative Claims Process

Sec.
380.30 Receivership administrative claims process.
380.31 Definitions.
380.32 Claims bar date.
380.33 Notice requirements.
380.34 Procedures for filing claim.
380.35 Determination of claims.
380.36 Decision period.
380.37 Notification of determination.
380.38 Procedures for seeking judicial review of disallowed claim.
380.39–380.49 [Reserved]
380.50 Determination of secured claims.
380.51 Consent to certain actions.
380.52 Repudiation of secured contract.
380.53 Expedited relief.
380.54 Sale of collateral by receiver.
380.55 Redemption from security interest.

Subpart B—Receivership Administrative Claims Process

§ 380.30 Receivership administrative claims process.

The Corporation as receiver of a covered financial company shall determine claims against the company and the receiver in accordance with the procedures set forth in 12 U.S.C. 5390(a)(2) through (5) and the regulations promulgated by the Corporation. The receivership administrative claims process shall not apply to any claim against a covered financial company that has been transferred to a bridge financial company or other party.

§ 380.31 Definitions.

(a) *Claim* means any right to payment from either the covered financial company or the Corporation as receiver, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(b) *Corporation, Corporation as receiver, and receiver* each means the Federal Deposit Insurance Corporation acting as receiver for a covered financial company.

(c) *Creditor* means a person asserting a claim.

§ 380.32 Claims bar date.

Upon its appointment as receiver for a covered financial company, the Corporation shall establish a claims bar date by which date creditors of the covered financial company shall present their claims, together with proof, to the receiver. The claims bar date shall be not less than 90 days after the date on which the notice to creditors to file claims is first published under § 380.33(a) of this subpart.

§ 380.33 Notice requirements.

(a) *Notice by publication.* Promptly after its appointment as receiver for a covered financial company, the Corporation shall publish a notice to the creditors of the covered financial company to file their claims with the receiver no later than the claims bar date. The Corporation as receiver shall republish such notice 1 month and 2 months, respectively, after the date the notice is first published. The notice to

creditors shall be published in one or more newspapers of general circulation where the covered financial company has its principal place or places of business. In addition to such publication in a newspaper, the Corporation may post the notice on the FDIC's Web site at *http://www.fdic.gov.*

(b) *Notice by mailing.* At the time of the first publication of the notice to creditors, the Corporation as receiver shall mail a notice to present claims no later than the claims bar date to any creditor shown in the books and records of the covered financial company. Such notice shall be sent to the last known address of the creditor appearing in the books and records or appearing in any claim found in the records of the covered financial company.

(c) *Notice by electronic media.* After publishing and mailing notice as required by paragraphs (a) and (b) of this section, the Corporation may communicate by electronic media with any claimant who expressly agrees to such form of communication.

(d) *Discovered claimants.* Upon discovery of the name and address of a claimant not appearing in the books and records of the covered financial company, the Corporation as receiver shall, not later than 30 days after the discovery of such name and address, mail a notice to such claimant to file claims no later than the claims bar date. Any claimant not appearing on the books and records that is discovered before the claims bar date shall be required to file a claim before the claims bar date, subject to the exception of § 380.35(b)(2) of this subpart. If a claimant not appearing on the books and records is discovered after the claims bar date, the Corporation shall notify the claimant to file a claim by a date not later than 90 days from the date appearing on the notice that is mailed to such creditor. Any claim filed after such date shall be disallowed, and such disallowance shall be final.

§ 380.34 Procedures for filing claim.

(a) *In general.* The Corporation as receiver shall provide, in a reasonably practicable manner, instructions for filing a claim, including by the following means:

(1) Providing contact information in the publication notice;

(2) Including in the mailed notice a proof of claim form that has filing instructions; and (3) Posting filing instructions on the Corporation's public Web site at *http://www.fdic.gov.*

(b) *When claim is deemed filed.* A claim that is mailed to the receiver in accordance with the instructions established under paragraph (a) of this section shall be deemed to be filed as of the date of postmark. A claim that is sent to the receiver by electronic media or fax in accordance with the instructions established under paragraph (a) of this section shall be deemed to be filed as of the date of transmission by the claimant.

(c) *Class claimants.* If a claimant is a member of a class for purposes of a class action lawsuit, whether or not the class has been certified by a court, each claimant must file its claim with the Corporation as receiver separately.

(d) *Indenture trustee.* A trustee appointed under an indenture or other applicable trust document related to investments or other financial activities may file a claim on behalf of the persons who appointed the trustee.

(e) *Legal effect of filing.* (1) Pursuant to 12 U.S.C. 5390(a)(3)(E)(i), the filing of a claim with the receiver shall constitute a commencement of an action for purposes of any applicable statute of limitations.

(2) *No prejudice to continuation of action.* Pursuant to 12 U.S.C. 5390(a)(3)(E)(ii) and subject to 12 U.S.C. 5390(a)(8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue, after the receiver's determination of the claim, any action which was filed before the date of appointment of the receiver for the covered financial company.

§ 380.35 Determination of claims.

(a) *In general.* The Corporation as receiver shall allow any claim received by the receiver on or before the claims bar date if such claim is proved to the satisfaction of the Corporation. The Corporation as receiver may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

(b) *Disallowance of claims filed after the claims bar date.* (1) Except as otherwise provided in this section, any claim filed after the claims bar date shall be disallowed, and such disallowance shall be final, as provided by 12 U.S.C. 5390(a)(3)(C)(i).

(2) *Certain exceptions.* Paragraph (b)(1) of this section shall not apply with respect to any claim filed by a claimant after the claims bar date and such claim shall be considered by the receiver if:

(i) The claimant did not receive notice of the appointment of the receiver in time to file such claim before the claims bar date, or the claim did not accrue until after the claims bar date, and

(ii) The claim is filed in time to permit payment. A claim is "filed in time to permit payment" when it is filed before a final distribution is made by the receiver.

§ 380.36 Decision period.

(a) *In general.* Prior to the 180th day after the date on which a claim against a covered financial company or the Corporation as receiver is filed with the Corporation, the Corporation shall notify the claimant whether it allows or disallows the claim.

(b) *Extension of time.* The 180-day period described in subsection (a) of this section may be extended by a written agreement between the claimant and the Corporation executed not later than 180 days after the date on which the claim against the covered financial company or the Corporation as receiver is filed with the Corporation (the "extended claims determination period"). If an extension is agreed to, the Corporation shall notify the claimant whether it allows or disallows the claim prior to the end of the extended claims determination period.

§ 380.37 Notification of determination.

(a) *In general.* The Corporation as receiver shall notify the claimant by mail of the decision to allow or disallow the claim. Notice shall be mailed to the address of the claimant as it last appears on the books, records, or both of the covered financial company; in the claim filed by the claimant with the Corporation as receiver; or in documents submitted in the proof of the claim. If the claimant has filed the claim electronically, the receiver may notify the claimant of the determination by electronic means.

(b) *Contents of notice of disallowance.* If the Corporation as receiver disallows a claim, the notice to the claimant shall contain a statement of each reason for the disallowance, and the procedures required to file or continue an action in court.

(c) *Failure to notify deemed to be disallowance.* If the Corporation does not notify the claimant before the end of the 180-day claims determination period, or before the end of any extended claims determination period, the claim shall be deemed to be disallowed, and the claimant may file or continue an action in court.

§ 308.38 Procedures for seeking judicial determination of disallowed claim.

(a) *In general.* In order to seek a judicial determination of a claim that has been disallowed, in whole or in part, by the Corporation as receiver, the claimant, pursuant to 12 U.S.C. 5390(a)(4)(A), may either:

(1) File suit on such claim in the district or territorial court of the United

States for the district within which the principal place of business of the covered financial company is located; or

(2) Continue an action commenced before the date of appointment of the receiver, in the court in which the action was pending.

(b) *Timing.* Pursuant to 12 U.S.C. 5390(a)(3)(A), a claimant who seeks a judicial determination of a claim disallowed by the Corporation must file suit on such claim before the end of the 60-day period beginning on the earlier of:

(1) The date of any notice of disallowance of such claim;

(2) The end of the 180-day claims determination period (unless such period has been extended with respect to such claim under § 380.36(b) of this subpart); or

(3) If the claims determination period was extended with respect to such claim under § 380.36(b), the end of such extended claims determination period.

(c) *Statute of limitations.* Pursuant to 12 U.S.C. 5390(a)(4)(C), if any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in 12 U.S.C. 5390(a)(4)(B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(d) *Jurisdiction.* Pursuant to 12 U.S.C. 5390(a)(9)(D), unless the claimant has first exhausted its administrative remedies by obtaining a determination from the receiver regarding a claim filed with the receiver, no court shall have jurisdiction over:

(1) Any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(2) Any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

§§ 380.39–380.49 [Reserved]

§ 380.50 Determination of secured claims.

In the case of a claim against a covered financial company that is secured by any property of the covered financial company, the receiver shall determine the amount of the claim; whether the claimant's security interest is legally enforceable and perfected; the priority of the claimant's security interest; and the fair market value of the property that is subject to the security interest. The receiver shall treat the portion of the claim that exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim.

§ 380.51 Consent to certain actions.

(a) A secured creditor may seek the consent of the Corporation as receiver to obtain possession of or exercise control over any property of the covered financial company that serves as collateral for the secured claim. Such consent may include the liquidation of such property by commercially reasonable methods taking into account existing market conditions, provided no involvement of the receiver is required.

(b) A party may seek the consent of the Corporation as receiver to the foreclosure or sale of any property of the covered financial company that serves as collateral for the secured claim. When the consent of the Corporation is sought hereunder, the secured creditor shall submit to the Corporation by certified mail a written request for the consent of the Corporation to the proposed action by the secured creditor. After the Corporation has gathered and analyzed the necessary information, the Corporation shall notify the secured creditor of its determination whether to grant consent as expeditiously as possible. If the Corporation determines not to grant consent, the Corporation shall include in the notification each reason why consent is not being given.

(c) Consents to be granted under this section are to be provided solely at the discretion of the Corporation. No person shall have any right to bring any action to direct or compel the granting of any consent under this section, or to pursue any claim or cause of action based on the alleged failure of the Corporation or any person acting on its behalf to take any action whatsoever under this section. Any consent granted by the Corporation as receiver under this section shall not act to waive or relinquish any rights granted to the Corporation in any capacity, pursuant to any other applicable law or any agreement or contract, and shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the Corporation to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the Corporation regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law. The right to consent under this section may not be assigned or transferred to any purchaser of property from the Corporation.

§ 380.52 Repudiation of secured contract.

(a) To the extent that a contract to which a covered financial company is a party is secured by property of the company, the repudiation of the contract by the Corporation as receiver shall not be construed as permitting the avoidance of any legally enforceable and perfected security interest in the property, but the security interest shall be deemed to secure any claim for repudiation damages.

(b) The Corporation as receiver may consent to the exercise of any legal or contractual rights against the property, including liquidation, for the purpose of applying the value of the property or its proceeds up to the amount of the allowed claim for damages for repudiation.

§ 380.53 Expedited relief.

(a) *In general.* A secured creditor may seek expedited relief outside the administrative claims process upon alleging:

(1) A legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

(2) That irreparable injury will occur if the claims procedure established under this subpart is followed.

(b) *Determination period.* No later than the end of the 90-day period beginning on the date on which a request for expedited relief is filed, the Corporation shall determine:

(1) Whether to allow or disallow such claim, or any portion thereof; or

(2) Whether such claim should be determined pursuant to the procedures established pursuant to this subpart.

(c) *Notice to claimant.* The Corporation shall notify the claimant of the determination made under this section and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(d) *Period for filing or renewing suit.* Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver) seeking a determination of the rights of the claimant with respect to such security

interest (or such security entitlement) after the earlier of:

(1) The end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(2) The date on which the Corporation denies the claim or a portion thereof.

(e) *Statute of limitations.* If an action described in paragraph (d) of this section is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with paragraph (d) of this section, the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

§ 380.54 Sale of collateral by receiver.

(a) The Corporation as receiver may sell property of the covered financial company that is subject to a security interest. In such a case, the purchaser of such property shall take free and clear of the security interest, and the security interest shall attach to the proceeds of the sale. Such proceeds, up to the allowed amount of the secured claim, shall be remitted to the claimant within a reasonable time after the sale.

(b) If the receiver sells property subject to a security interest under subsection (a) of this section, a holder of such security interest may purchase the property from the receiver, and may offset its claim against the purchase price of such property.

(c) This section shall not apply with respect to any property that is subject to a security interest described in 12 U.S.C. 5390(a)(3)(D)(iii)(II).

§ 380.55 Redemption from security interest.

The Corporation as receiver may pay the secured creditor the fair market value of the property subject to a security interest up to the amount of the allowed secured claim in full and retain such property free and clear of such security interest.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of March 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–6705 Filed 3–22–11; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, and 741

RIN 3133–AD87

Net Worth and Equity Ratio

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: On January 4, 2011, President Obama signed Senate Bill 4036 into law, which, among other things, amends the statutory definitions of "net worth" and "equity ratio" in the Federal Credit Union Act. NCUA proposes to make conforming amendments to the definition of "net worth" as it appears in NCUA's Prompt Corrective Action regulation and the definition of "equity ratio" as it appears in NCUA's Requirements for Insurance regulation. NCUA also proposes to make technical changes in other regulations to ensure clarity and consistency in the use of the term "net worth," as it is applied to federally-insured credit unions.

DATES: Comments must be received on or before May 23, 2011.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Notice of Proposed Rulemaking (Net Worth and Equity Ratio)" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On January 4, 2011, President Obama signed Senate Bill 4036 (the Bill) into law. S. 4036, 111th Cong., Public Law 111–382 (2011). The Bill amends the Federal Credit Union Act (the Act) to clarify NCUA's authority to make stabilization fund expenditures without borrowing from the Treasury, amends the definitions of "equity ratio" and "net worth," and requires the Comptroller General of the United States to conduct a study on NCUA's handling of the recent corporate credit union crisis. The Bill is divided into four sections, each of which is discussed briefly below. The amendments in this proposed rule implement the changes made to the Act by sections two and three of the Bill.

1. Section One—Stabilization Fund

This section amends the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) provisions of the Act in 12 U.S.C. 1795e. Specifically, the amendments add a new provision authorizing NCUA to make premium assessments of federally-insured credit unions to pay pending or future TCCUSF expenses directly, in addition to the existing authority to make assessments to repay Treasury advances. Public Law 111–382. Exercise of this direct assessment authority requires the NCUA Board "take into consideration any potential impact on credit union earnings such an assessment may have" and requires the premium be paid not later than 60 days following the assessment. The amendments also make clear that, during the period of time in which the Treasury agrees to extend the life of the TCCUSF, the NCUA can obtain additional advances from the Treasury. *Id.* NCUA does not have regulations on the TCCUSF, so no changes to NCUA regulations are necessary.

2. Section Two—Equity Ratio

Section two of the Bill amends § 202(h)(2) of the Act (12 U.S.C. 1782(h)(2)) by redefining the equity ratio for the National Credit Union Share Insurance Fund (NCUSIF or Fund). Under the amended definition, the equity ratio will be calculated "using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity." Public Law 111–382. The term "equity ratio" is defined in § 741.4(b) of NCUA's regulations and is used in several places throughout that section. As discussed more fully below, the Board, is proposing to amend the definition of "equity ratio" in NCUA's regulations to mirror the recent statutory change.

Section Three—Net Worth Definition

Section three of the Bill amends section 216(o)(2) of the Act (12 U.S.C. 1790(o)(2)) by redefining the term "net worth" as it applies to federally insured credit unions for purposes of prompt corrective action (PCA). The amended definition retains all of the existing elements of net worth and includes the

following new component: "[A]t the Board's discretion and subject to rules and regulations established by the Board, assistance provided under § 208 to facilitate a least-cost resolution consistent with the best interests of the credit union system." Public Law 111–382. As discussed more fully below, the Board proposes to amend the definition of "net worth" in NCUA's regulations for PCA purposes (§ 702.2(f)) to reflect and implement this statutory change.

Section Four—Study of the National Credit Union Administration

Section four of the Bill requires the Comptroller General of the United States to conduct a study of NCUA's supervision of corporate credit unions and implementation of PCA. The purpose of the study is to determine the reasons for the failure of any corporate credit union since 2008, evaluate the adequacy of NCUA's response to the failures of corporate credit unions, evaluate the effectiveness of the implementation of PCA by NCUA, and examine whether NCUA has effectively implemented each of the recommendations of its Inspector General in its Material Loss Review Report. The Bill requires the Comptroller to submit the report, within one year from the date of enactment of the Bill, to the Financial Stability Oversight Council (the Council). Within six months after the date of receipt of the report from the Comptroller General, the Council must submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations issued to the National Credit Union Administration under section 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5330).

B. Proposed Changes

As noted above, the Bill amends the definition of "equity ratio" and the PCA definition of "net worth." The Board is proposing to make amendments to NCUA's regulations to implement the recent statutory changes.

1. Equity Ratio

The Board is proposing to amend the definition of "equity ratio" set forth in § 741.4(b) to clarify that the equity ratio will be calculated using the financial statements of the NCUSIF alone, without any consolidation or combination with the financial statements of any other fund or entity. The Board notes that this amendment reflects a statutory change to section 202 of the Act, 12 U.S.C. 1782, and, as such, the Board must make this change to § 741.4, which implements section 202 of the Act.

2. Net Worth

The Board is also proposing to amend NCUA's regulations to reflect the recent statutory change to the definition of "net worth" for purposes of PCA. As already noted, the definition of "net worth" for purposes of PCA is found in § 702.2(f) of NCUA's regulations, 12 CFR 702.2(f). The Bill provides that the Board, in its discretion, may include any assistance provided under section 208 of the Act (12 U.S.C. 1788) in the computation of a federally insured credit union's net worth for PCA purposes. Public Law 111–382, § 3. The Bill also provides that the inclusion of § 208 assistance in the computation of net worth is subject to any rules or regulations established by the Board. *Id.*

Section 208 of the Act allows the Board, in its discretion, to make loans to, or purchase the assets of, or establish accounts in insured credit unions the Board has determined are in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union. 12 U.S.C. 1788(a)(1). Except in the case of a voluntary liquidation, the Board is permitted to provide assistance under § 208 only when it is necessary to protect the Fund or the interests of the members of the credit union. *Id.* In addition to § 208 assistance provided for liquidity purposes, the NCUA may place funds containing the elements of capital in a credit union. 12 U.S.C. 1788(a)(2). Capital accounts would include subordinated notes and capital instruments. These accounts, including interest accrued and paid, would be available to cover losses realized by the credit union exceeding available retained earnings and should be included in the calculation of regulatory capital to the extent the accounts meet the qualifications discussed below.

In this rule the Board proposes to limit the inclusion of § 208 assistance in the computation of a credit union's net worth to those types of assistance containing minimum elements of equity. The Board proposes to further limit the accounts that will qualify as regulatory capital to accounts that: Have a remaining maturity of five years or more; are not insured by the NCUSIF; may not be pledged as security on a loan to, or other obligation of, any party; have non-cumulative dividends; and are subordinate to the NCUSIF, shareholders, and creditors.

Although the Board is currently proposing rules with respect to § 208 assistance as permitted under the Bill, the Board may propose additional rules in the future, as it is necessary to protect the Fund or ensure the efficient application of PCA.

a. Technical Changes

This proposed rule also includes a technical correction to the definition of net worth in § 702.2(f)(3) to address situations where an acquiring credit union benefits twice from a combination. NCUA's current rules require the addition of the retained earnings of the acquired credit union to the net worth of the acquiring credit union. In the circumstance of a combination that results in a bargain purchase gain,[1] the current rule's requirements can result in a double counting of net worth for the purposes of PCA. This proposed correction seeks to prevent this situation by requiring the subtraction of any bargain purchase gain from the target's retained earnings before the latter amount is included as net worth. This proposed correction limits the difference between the added retained earnings and bargain purchase gain to an amount that is zero or more, which will prevent a retained earnings deficit from flowing forward to the acquiring institution. The proposed revision to this section also adds the requirement that the retained earnings of the acquired credit union at the point of acquisition must be measured under generally accepted accounting principles as referenced in the Act. 12 U.S.C.1790d(o)(2)(A).

The Board is also making technical changes to other sections of NCUA's regulations that reference or use the term "net worth" in the PCA context. These changes will ensure clarity and continuity in NCUA's definition of "net worth."

Section 701.21(h) of the regulations addresses third party servicing of indirect vehicle loans and, in part, limits the aggregate amount of vehicle loans serviced by a third-party servicer that a federally-insured credit union can acquire, as a percentage of the credit union's net worth. The § 701.21(h)(4)(iv) definition of "net worth" is different than that used in part 702 but is based

[1] For combinations of mutual institutions in which no consideration is transferred, a bargain purchase occurs when the fair value of the net assets acquired exceeds the fair value of the equity or member interest in the acquirer. Generally accepted accounting principles require this excess to be recognized immediately as a gain in earnings, which increases retained earnings and qualifies as regulatory capital. See Accounting Standards Codification (ASC) Paragraphs 805–30–55–3 through 55–5, *Special Considerations in Applying the Acquisition Method to Combinations of Mutual Entities.*

on the same statutory provision of the Act. Currently § 701.21(h)(4)(iv) defines "net worth" as:

> The retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the National Credit Union Share Insurance Fund.

12 CFR 701.21(h)(4)(iv). While this definition is similar to that used in § 702.2(f), it does not contain all of the elements used in that definition and would not reflect the change made by this proposed rule. For consistency and clarity, the Board proposes to amend § 701.21(h)(4)(iv) to indicate that the term "net worth" has the same meaning as it is defined in § 702.2. The proposed change would replace the current definition in § 701.21(h)(4)(iv) with a statement that the term "net worth" means the retained earnings balance of a credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f). This cross reference is similar to others used in NCUA's regulations. Although the Board is deleting language regarding the computation of net worth for low-income credit unions, this provision, which is already found in § 702.2(f), will be incorporated by reference under this proposed change.

With respect to sections of the regulations outside of part 702 that use the term "net worth" in the PCA context, the Board will continue to use cross references to the § 702.2(f) definition of "net worth." Such cross references are found in §§ 703.2, 742.2, and 747.2003 of NCUA's regulations. Finally, the Board notes that § 701.34(c) and (d) and its accompanying appendix and § 701.21(c)(7)(iii) of NCUA's regulations use the term "net worth" but do not currently contain a cross reference or an alternative definition of "net worth." To conform these and any future uses of the term "net worth," the Board is proposing to include a statement in the general definitions of the regulations (part 700) to clarify that, unless otherwise noted, the term "net worth" as applied to an insured credit union has the same definition as that set forth in § 702.2(f). The Board believes this "catch all" statement will eliminate confusion and ensure the correct definition is applied in varying circumstances.

b. Net Worth in the Member Business Loan Context

Consistent with the statutory amendment, this proposed rule amends the definition of "net worth" only when that term is used in the PCA context. NCUA's member business loan regulation contains a definition of "net worth" that differs from the definition used in part 702. *See* 12 CFR 723.21 This definition is based on the statutory definition included in limitations of member business loans set forth in section 107A of the Act, 12 U.S.C. 1757a(c)(2). The Bill, which provided the authority for the changes proposed in this rule, did not address the definition of "net worth" as it applies in the context of member business loans. As such, the Board is not amending the definition of "net worth" in the member business loan rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This proposed rule modifies the definition of "net worth" and "equity ratio," it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

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

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

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

List of Subjects in 12 CFR Parts 700, 701, 702, and 741

Bank deposit insurance, Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 17, 2011.

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 700, 701, 702, and 742 as set forth below:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6) and 1766.

2. In § 700.2, redesignate paragraphs (f) through (j) as paragraphs (g) through (k) and add new paragraph (f) to read as follows:

§ 700.2 Definitions.

* * * * *

(f) *Net worth.* Unless otherwise noted, the term "net worth," as applied to credit unions, has the same meaning as set forth in § 702.2(f) of this chapter.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

4. Revise § 701.21(h)(4)(iv) to read as follows:

§ 701.21 Loans to Members and Lines of Credit to Members.

* * * * *

(h) * * *

(4) * * *

(iv) The term "net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f) of this chapter.

* * * * *

PART 702—PROMPT CORRECTIVE ACTION

5. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790(d).

6. In § 702.2, revise paragraph (f)(3) and add paragraph (f)(4) to read as follows:

§ 702.2 Definitions.

* * * * *

(f) * * *

(3) For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles. A mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term "net worth" also includes loans to and accounts in an insured credit union established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

(i) Have a remaining maturity of more than 5 years;

(ii) Are subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund;

(iii) Are not pledged as security on a loan to, or other obligation of, any party;

(iv) Are not insured by the National Credit Union Share Insurance Fund; (v) Have non-cumulative dividends;

(vi) Are transferable; and

(vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

7. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

8. In § 741.4, in paragraph (b), revise the introductory text for the definition of *equity ratio* to read as follows:

§ 741.4 Insurance premium and one percent deposit.

* * * * *

(b) * * *

Equity ratio, which shall be calculated using the financial statements of the NCUSIF alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of:

* * * * *

[FR Doc. 2011–6757 Filed 3–22–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0123; Airspace Docket No. 11–AGL–2]

Proposed Amendment of Class E Airspace; Duluth, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Duluth, MN, to accommodate new Standard Instrument Approach Procedures at Duluth International Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before May 9, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0123/Airspace Docket No. 11–AGL–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0123/Airspace Docket No. 11–AGL–2." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace, as an extension to a Class D or E surface area; and Class E airspace extending upward from 700 feet above the surface, for new standard instrument approach procedures at Duluth

International Airport, Duluth, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraphs 6004 and 6005, respectively, of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Duluth International Airport, Duluth, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6004 Class E Airspace areas designated as an extension to a Class D or Class E Surface Area.

* * * * *

AGL MN E4 Duluth, MN [Amended]

Duluth International Airport, MN
(Lat. 46°50′32″ N., long. 92°11′37″ W.)
Duluth VORTAC
(Lat. 46°48′08″ N., long. 92°12′10″ W.)

That airspace extending upward from the surface within 3.4 miles each side of the Duluth VORTAC 193° radial extending from the 4.9-mile radius of Duluth International Airport to 14.2 miles south of the VORTAC, and within 3.6 miles each side of the 267° bearing from Duluth International Airport extending from the 4.9-mile radius of the airport to 9.7 miles west of the airport.

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Duluth, MN [Amended]

Duluth International Airport, MN
(Lat. 46°50′32″ N., long. 92°11′37″ W.)

That airspace extending upward from the 700 feet above the surface within a 7.1-mile radius of Duluth International Airport, and within 4.4 miles each side of the 267° bearing from the airport extending from the 7.1-mile radius to 7.7 miles west of the airport.

Issued in Fort Worth, TX, on March 15, 2011.

Richard J. Kervin, Jr.,

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

[FR Doc. 2011–6847 Filed 3–22–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter 1

Notice of Policy Regarding Civil Aircraft Operators Providing Contract Support to Government Entities (Public Aircraft Operations)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of policy change; request for comments.

SUMMARY: This notice states the Federal Aviation Administration's (FAA) policy pertaining to civil aircraft operators that provide contract support to government entities.

DATES: Comments must be received before April 22, 2011.

ADDRESSES: This is a statement of policy only. We are accepting comments concerning the implementation of this policy only from government entities via e-mail at *PublicAircraft@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Monica C. Buenrostro, General Aviation and Commercial Division, Flight Standards Service, AFS–800, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8212; e-mail: *monica.c.buenrostro@faa.gov.*

SUPPLEMENTARY INFORMATION: Title 49 of the United States Code (U.S.C), section 40102 (a)(41) provides the definition of "Public Aircraft" and Title 49 U.S.C 40125 provides the Qualifications for Public Aircraft Status. These statutory provisions provide the legal basis for public aircraft operations in the United States.

The FAA recognizes that these statutory provisions are difficult to apply to aircraft operations conducted by civil contractors for government entities. The FAA is therefore clarifying its policy toward these operators by better defining the responsibilities of the parties affected by these contracts.

Public Aircraft Operation is limited by the statute to certain government operations within U.S. airspace. Although these operations must comply with certain general operating rules (including those applicable to all aircraft in the National Airspace System), other civil certification and safety oversight regulations do not apply. Whether an operation may be considered public is determined on a flight-by-flight basis, under the terms of the statute (49 U.S.C 40102 and 49 U.S.C 40125) and considers aircraft

ownership, operator, the purpose of the flight and the persons on board the aircraft.

FAA Policy

- Public aircraft status is not an "automatic" status granted by the existence of a contract between a civil operator and a government agency.
- The FAA considers ALL contracted operations to be civil aircraft operations, unless:
- The contracting government entity provides the operator with a written declaration (from the contracting officer or higher-level official) of public aircraft status for designated, qualified flights;
- The contracted operator notifies the FAA Flight Standards District Office (FSDO) having oversight of the operator (or the operation, as appropriate) that it has contracted with a government entity to conduct "eligible" public aircraft operations;
- The contracted operator submits the written declaration to the FSDO with jurisdiction having oversight;
- The flight(s) in question are determined to be legitimate public aircraft operations under the terms of the statute; and
- The declaration is made in advance of the proposed public aircraft flight.
- To implement this policy and collect data, the FSDO having oversight of the contracted operator will record receipt of these declarations by electronic means.

Contracted government entities are cautioned that public aircraft operations performed by civil operators create a significant transfer of liability to the contracting government entity, and that FAA oversight ceases.

Civil operators are cautioned that unless there is a declaration of public aircraft status, all operations must be conducted in accordance with all applicable civil aviation regulations, and that the FAA retains oversight and enforcement authority for any deviation from the provisions of Title 14 of the Code of Federal Regulations (14 CFR). Operators are also cautioned that it is their responsibility to refuse a contract to perform operations that violate 14 CFR if they cannot ensure that the government entity offering the contract has declared that operation as a public aircraft operation and that such flight meets the public aircraft eligibility requirements as outlined in the statute.

The FAA is revising Advisory Circular 00.1–1, Government Aircraft Operations, and FAA Order 8900.1, Flight Standards Information Management System. These revisions will more fully address public aircraft policy issues and implementation.

Government entities with experience using civil operators under contract are invited to share their experience and suggestions concerning implementation of this policy. Government entities may submit comments to *PublicAircraft@faa.gov* to be considered as the FAA continues to refine the public aircraft operations policy.

Issued in Washington, DC, on March 17, 2011.

John W. McGraw,

Acting Director, Flight Standards Service.

[FR Doc. 2011–6894 Filed 3–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2010–N–0029]

Medical Devices; Ovarian Adnexal Mass Assessment Score Test System; Labeling; Black Box Restrictions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation classifying ovarian adnexal mass assessment score test systems to restrict these devices so that a prescribed warning statement that addresses a risk identified in the special controls guidance document must be in a black box and must appear in all labeling, advertising, and promotional material. The black box warning mitigates the risk to health associated with off-label use as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery. Elsewhere in this issue of the **Federal Register**, FDA is announcing a final rule that classifies the ovarian adnexal mass assessment score test system into class II (special controls).

DATES: Submit either electronic or written comments by May 23, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0029, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2010–N–0029. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, *see* the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Scott McFarland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5543, Silver Spring, MD 20993–0002, 301–796–6217.

SUPPLEMENTARY INFORMATION:

I. What is the background of this proposed rule?

A. Ovarian Adnexal Mass Assessment Score Test System

An ovarian adnexal mass assessment score test system measures one or more analytes in serum and combines the values into a single score that is then used to determine the likelihood that the pre-surgical adnexal mass in a woman not yet referred to an oncologist, is malignant. An ovarian adnexal mass assessment score test system is intended for use in those patients for whom surgery is planned, and should not be used to decide whether or not a patient should receive surgery. The test is used in conjunction with a clinical and radiological evaluation of the patient by physicians in determining whether the patient should be referred to a gynecologic oncologist for surgery.

B. Identified Risk to Health

The ovarian adnexal mass assessment score test system is not indicated for use as a screening or diagnostic test for ovarian cancer. Off-label use of the test (*e.g.,* in patients who are not already

identified as needing surgery for pelvic mass or without reference to an independent clinical/radiological evaluation of the patient), may lead to a high frequency of unnecessary further testing and surgery due to false positive results, or to delay in tumor diagnosis due to false negative results.

II. Why is FDA proposing to require black box warnings on ovarian adnexal mass assessment score test system labeling, advertising, and promotional material?

FDA has determined that in order to provide reasonable assurance of safety and effectiveness, it is necessary to restrict the ovarian adnexal mass assessment score test system to sale, distribution, and use with labeling, advertising, and promotional material that bears a warning statement in a black box that alerts users to the risk associated with off-label use as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery. While FDA is establishing as a special control "Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System" which recommends a black box warning to address the risk of off-label use, FDA believes it is necessary to require this warning in labeling and advertising by restricting the device under section 520(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(e)). A notice of availability of this special controls guidance document is published elsewhere in this issue of the **Federal Register**.

In cases in which class II and class III devices have significant risks that would make the devices unsafe if used inappropriately, FDA believes the risks need to be explained in warning statements placed in a black box that is displayed prominently in the labeling, advertising, and promotional material to ensure awareness by the end user. Awareness of these important risks by the end user enables these devices to be used safely. In this case, a prominent black box warning, which alerts the user to the limitations of this device, is necessary in all labeling, advertising, and promotional materials to allow ovarian adnexal mass assessment score test system devices to be used safely. The proposed prominent black box warning would read as follows:

PRECAUTION: The [test name] should not be used without an independent clinical/radiological evaluation and is **not** intended to be a screening test or to determine whether a patient should proceed to surgery. Incorrect use of the [test name] carries the risk of unnecessary testing, surgery, and/or delayed diagnosis.

III. What is the legal authority for this proposed rule?

FDA is issuing this proposed rule under the authority of section 520(e) of the FD&C Act, which authorizes FDA to restrict sale, distribution, and use of devices upon certain conditions. FDA is also issuing this proposed rule under general device and administrative provisions of the FD&C Act (sections 501, 510, 513, 515, 520, and 701 (21 U.S.C. 351, 360, 360c, 360e, 360j, and 371, respectively)).

IV. What is the environmental impact of this proposed rule?

FDA has determined under 21 CFR 25.34(b) and (f) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. What is the economic impact of this proposed rule?

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would strengthen existing cautions against misuse of a new product, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

An ovarian adnexal mass assessment test system is a device that measures one or more proteins in serum to yield a single result for the likelihood that an adnexal pelvic mass in a woman is malignant. Such a test would identify women whose planned gynecologic surgery would benefit from referral to a gynecological oncologist, despite negative results from other clinical and radiographic tests for ovarian cancer.

In considering the appropriate level of regulatory oversight for this device, FDA concluded in classifying the device that general and special controls to minimize the risk of false positive and false

negative results, and risks associated with improper off-label use would provide a reasonable assurance of safety and effectiveness of the ovarian adnexal mass assessment test system. The special controls guidance recommends use of a black box warning to minimize these risks. Without such a strong warning, ovarian adnexal mass assessment test systems might be used as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery. Off-label use of the test or the use of test results without consideration of other diagnostic testing and clinical assessment could pose a risk for morbidity and mortality due to nonreferral for oncologic evaluation and treatment.

In order to require the specific black box warning on labeling and on all advertising and promotional materials for the device, FDA is issuing this proposed rule under section 520(e) of the FD&C Act. Through this action, the Agency proposes to require a black box warning on product labeling, advertising, and promotional materials for ovarian adnexal mass assessment test systems. This warning would make users aware of the limitations of this device and the serious risks associated with its misuse. With the proposed addition of this black box warning to product labeling, advertising, and marketing materials, the Agency concludes there would be a reasonable assurance of the safety and effectiveness of ovarian adnexal mass assessment test systems.

The economic impact of this proposed rule is expected to be very small. We are aware of a single manufacturer producing a single product that would be affected by this black box warning. The manufacturer should be able to incorporate the warning in the course of developing its product labeling. The admonition against off-label use for this device already exists, so the addition of this type of warning is not expected to have a significant effect on the market for this product. The expected impact of this proposal on the market for this product would be a reduction in off-label use among the small number of users who would be undeterred by a less visible warning.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposal would impose almost no cost on manufacturers. The proposed black box warning would strengthen an existing admonition against off-label use and would not significantly affect usage. Impacts on any entities would be so small as to be difficult to quantify. For these reasons, the Agency proposes to certify that this rule would not have a significant economic impact on a substantial number of small entities.

VI. How does the Paperwork Reduction Act of 1995 apply to this proposed rule?

FDA concludes that labeling provisions of this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the black box warning on all labeling, advertising, and promotional materials for ovarian adnexal mass assessment score test system devices is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public." (*see* 5 CFR 1320.3(c)(2)).

VII. What are the federalism impacts of this proposed rule?

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain State requirements "different from or in addition to" certain Federal requirements applicable to devices (21 U.S.C. 360k; See *Medtronic* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008)). If this proposed rule is made final, the final rule would create a requirement under 21 U.S.C. 360k for a black box warning statement that must appear in all advertising, labeling, and promotional material for ovarian adnexal mass assessment score test systems.

VIII. How do you submit comments on this proposed rule?

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 866 as follows.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. In § 866.6050 of subpart G, add new paragraph (c) to read as follows:

§ 866.6050 Ovarian adnexal mass assessment score test system.

* * * * *

(c) *Black Box Warning.* Under section 520(e) of the Federal Food, Drug, and Cosmetic Act these devices are subject to the following restriction: A warning statement must be placed in a black box and must appear in all advertising, labeling, and promotional material for these devices. That warning statement must read:

PRECAUTION: The [test name] should not be used without an independent clinical/radiological evaluation and is **not** intended to be a screening test or to determine whether a patient should proceed to surgery. Incorrect use of the [test name] carries the risk of unnecessary testing, surgery, and/or delayed diagnosis.

Dated: March 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6621 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Part 123

[Public Notice: 7384]

RIN 1400–AC71

International Traffic in Arms Regulations: Exemption for Temporary Export of Chemical Agent Protective Gear

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State is proposing to amend the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of chemical agent protective gear for exclusive personal use to destinations not subject to restrictions and to Afghanistan and Iraq under specified conditions. Additionally, an exemption for firearms and ammunition is clarified by removing certain extraneous language that does not change the meaning of the exemption.

DATES: The Department of State will accept comments on this proposed rule until May 23, 2011.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov,* with the subject line, "Regulatory Change—Section 123.17."
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change—Section 123.17, SA–1, 12th Floor, Washington, DC 20522–0112.
- *Internet:* View this notice by going to the regulations.gov Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2804, or Fax (202) 261–8199; e-mail *memosni@state.gov.* ATTN: Regulatory Change, Sec. 123.17.

SUPPLEMENTARY INFORMATION: U.S. individuals are traveling to hazardous areas in foreign countries where they need to wear body armor or chemical agent protective gear for personal safety. In August 2009, the ITAR was amended to provide an exemption for the temporary export of body armor covered by 22 CFR 121.1, Category X(a)(1). Now, the Department of State is proposing to amend the ITAR at §§ 123.17(f) and (g) to add an exemption for the temporary export of chemical agent protective gear covered by 22 CFR 121.1, Category XIV(f)(4). The proposed exemption will be available for temporary exports to countries not subject to restrictions under ITAR § 126.1 and to Afghanistan and Iraq under specified conditions. In order to use the exemption, the chemical agent protective gear must be for the individual's exclusive use and must be returned to the United States. The individual may not re-export the protective gear to a foreign person or otherwise transfer ownership. The protective gear may not be exported to any country where the importation would be in violation of that country's laws.

In the event the chemical agent protective gear is lost, stolen or otherwise not returned to the United States with the individual that temporarily exported the gear, a detailed report about the incident must be submitted to the Office of Defense Trade Controls Compliance. If the chemical agent protective gear is lost, the report should describe all attempts to locate the gear and explain the circumstances leading to its loss. In the event the chemical agent protective gear is used and disposed according to HAZMAT guidelines, the report should provide a disposal date and location details for the approved HAZMAT facility used, along with a receipt for disposal services. If a HAZMAT facility is not available, the report should describe the date, location and method used to dispose of the protective gear.

The proposed change removes at (g)(2) the requirement that assistance to the government of Iraq be "humanitarian" to more accurately match the language of United Nations Security Council restrictions, which do not limit assistance to humanitarian assistance.

Section (c)(3) is to be revised to remove what is in practice extraneous language. Subject to the requirements of (c)(1)–(3), the exemption applies to all eligible individuals (with the noted exceptions). Thus, while the text is revised, the meaning of (c)(3) is not changed.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this proposed amendment is not subject to the notice and comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 129888 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123 is proposed to be amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for part 123 will continue to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

2. Section 123.17 is to be amended to revise the heading, paragraphs (c)(3), (f), (g) introductory text, (g)(2), and to add paragraph (g)(3), to read as follows:

§ 123.17 Exports of firearms, ammunition, and protective gear.

* * * * *

(c) * * *

(3) They must be for that person's exclusive use and not for reexport or other transfer of ownership. The individual must declare the firearm(s) to a U.S. Customs and Border Protection officer upon each departure from the United States, present the Internal Transaction Number (ITN) from submission of the Electronic Export Information in the Automated Export System per § 123.22(b), and declare that it is his or her intention to return the article(s) on each return to the United States. The foregoing exemption is not applicable to the personnel referred to in § 123.18.

* * * * *

(f) Except as provided in § 126.1 of this subchapter, Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by Category X(a)(1) and one set of chemical agent protective gear covered by Category XIV(f)(4) of this subchapter provided that:

(1) A declaration by the U.S. person via the Automated Export System (AES) and an inspection by a U.S. CBP officer are made, per § 123.22(b);

(2) The body armor or chemical agent protective gear to be exported is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed);

(3) The body armor or chemical agent protective gear to be exported is for that person's exclusive use and not for reexport or other transfer of ownership. The individual must declare the body armor or chemical agent protective gear to be exported to a U.S. CBP officer via the AES upon each departure from the United States and declare that it is his or her intention to return the article(s) on each return to the United States; and

(4) If the body armor or chemical agent protective gear exported under this exemption are lost or otherwise not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2).

(g) The license exemption set forth in paragraph (f) of this section is also available for the temporary export of body armor and/or chemical agent protective gear for personal use to Afghanistan and to Iraq provided that:

(1) * * *

(2) For temporary exports to Iraq the U.S. person utilizing the license exemption is either a person affiliated with the U.S. Government traveling on official business or is a person not affiliated with the U.S. Government but traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of the Government of Iraq.

(3) The exporter claiming this license exemption shall present to a U.S. Customs and Border Protection officer prior to each export a copy of the direct authorization from the Government of Iraq, including an English translation, or a copy of the documentation showing that the travel is on official business for the U.S. government, along with the Internal Transaction Number (ITN) for the AES submission.

Dated: March 14, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–6850 Filed 3–22–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 51

RIN 2900–AN63

Per Diem Payments for the Care Provided to Eligible Veterans Evacuated From a State Home as a Result of an Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning per diem payments to States to permit

continuation of such payments in some situations for veterans who have been evacuated from a State home as a result of an emergency. Per diem is the daily rate paid by VA to a State for providing a specified level of care to eligible veterans in a facility that is officially recognized and certified by VA. This regulation would authorize VA to continue to pay per diem when veterans for whom VA is paying per diem are evacuated as a result of an emergency from a State home to a facility that is not recognized by VA as a State home. The regulation would require, in order for per diem payments to continue while the veteran is relocated due to an emergency, that an appropriate VA official determine whether an emergency exists and whether the facility to which veterans may be evacuated (evacuation facility) complies with certain minimum standards. This regulation would establish the minimum standards that facilities to which veterans are evacuated must meet in order for States to continue receiving per diem for relocated veterans. These standards would apply also to evacuation facilities when veterans are evacuated from contract nursing homes.

DATES: Comments must be received by VA on or before May 23, 2011.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN63 Per Diem Payments for the Care Provided to Eligible Veterans Evacuated from a State Home as a Result of an Emergency." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Theresa A. Hayes, MPH, RN, Office of Patient Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6771 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 1741–1745, VA provides per diem payments to reimburse States for each eligible veteran receiving nursing home care, domiciliary care, and adult day health care in State home facilities that are recognized and certified by VA. Section 1742 specifically provides that "[n]o payment or grant may be made to any home * * * unless such home is determined by the Secretary to meet such standards as the Secretary shall prescribe, which standards with respect to nursing home care shall be no less stringent than those prescribed pursuant to section 1720(b) of this title." The statutes do not address circumstances in which veterans may need to be evacuated temporarily to another facility due to an emergency.

VA implemented its authority to provide per diem payments to States in 38 CFR 17.190–17.200 and parts 51, 52, and 58. However, current regulations do not address VA's authority to continue per diem payments to a State for a veteran during an emergency evacuation of the veteran to a temporary or substitute State home facility where the State continues to provide care. We propose to amend these regulations to clarify our interpretation of VA's authority to continue per diem payments during such evacuations and to establish certain minimum standards for temporary or substitute facilities used by States in these situations.

Certain recent emergencies have established the need to address emergency situations. VA believes that States should continue to receive per diem payments when they move veterans out of the State home during an emergency but continue to provide or pay for the care.

This proposed rule would provide that, when a State temporarily evacuates residents of a State home and relocates them to a non-recognized facility due to an emergency that would make it unsafe for them to remain in the recognized State home facility, VA may continue to make per diem payments to the State for the evacuated residents. This regulation would provide for the continuation of per diem payments for care provided to a veteran in an evacuation facility that is not recognized by VA as a State home if the director of the VA medical center (VAMC) of jurisdiction determines, or the director of the Veterans Integrated Service Network (VISN) in which the State home is located (if the VAMC director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets certain minimum standards.

Implementation of VA's authority to continue payment of per diem in an emergency would be set forth in a new section, proposed § 51.59. We note that we are currently considering reorganizing the regulations governing the State home per diem program and, specifically, are considering revising part 51 to include regulations governing domiciliary care. We have carefully crafted proposed § 51.59 to fit within such a possible reorganization or revision, as well as to fit within the current organization of part 51. The language of the proposed rule would apply for per diem payments for veterans receiving domiciliary care as well as nursing home care. We also note that the minimum standards in the proposed rule for evacuation facilities would also be applicable when veterans are evacuated from contract nursing homes. This is to ensure compliance with the requirement under 38 U.S.C. 1742(a) that the standards for State homes must be no less stringent than the standards for facilities with whom VA contracts to provide nursing home care under section 1720. We would place the rule in the body of regulations governing per diem because it authorizes the continuing payment of per diem. We would also, for purposes of clarity and organization, add a reference to the proposed rule in the part 17 regulations that govern community nursing home care facilities.

We propose to define "emergency" in proposed paragraph (a). The definition would contain three requirements. First, an emergency would "mean[ ] an occasion or instance where * * * [i]t would be unsafe for veterans receiving care at a State home facility to remain in that facility". This criterion is obvious and necessary, because if the facility is not unsafe then there is no reason to evacuate patients. The second criterion would be that "[t]he State is not, or believes that it will not be, able to provide care in the State home on a temporary or long-term basis for any or all of its veteran residents due to a situation involving the State home". We would make the requirement specific to "a situation involving the State home" in order to distinguish it from a situation involving a particular patient, which we do not believe should require evacuation. We would also clarify that the rule does not apply to "a situation where a particular veteran's medical condition requires that the veteran be transferred to another facility, such as for a period of hospitalization." Third, we would require that "[t]he State determine[ ] that the veterans must be evacuated to another facility or facilities." We believe that the State, and not VA, will be in the best position to make this initial determination concerning the State facility. This is a

broad definition, which would cover the temporary relocation of veterans in many situations, including the case of a natural disaster or in which the integrity of part or all of the facility is compromised.

Proposed § 51.59(b) would provide that "VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who resided in a State home, and for whom VA was paying per diem, if such veteran is evacuated during an emergency into a facility other than a VA facility if the State is responsible for providing or paying for the care." The regulation would require discontinuance of per diem payments after 30 days if the veteran remains in the evacuation facility unless "the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to return the veteran to a State home within the 30-day period, in which case such official will approve additional period(s) in accordance with this section." The additional period(s) would be for no more than 30 days per period and would be approved in accordance with proposed § 51.59(b). It is important that the veterans for whom we provide per diem payments be returned to a State home as soon as possible, and this provision will help facilitate this result. Finally, we would require that the evacuation facility meet certain minimum standards established in proposed paragraph (c)(1) as a condition of payment and would enforce this requirement through retroactive recovery of any payments made for care provided to a veteran in a substandard facility.

Although it may be critical to enable States to continue to receive per diem payments during an emergency relocation, it is also important that VA ensure that the facilities in which these veterans are cared for meet certain minimum standards for the welfare of the veterans. Therefore, in proposed paragraph (c)(1), we propose standards applicable to evacuation facilities, requiring that "[e]ach veteran who is evacuated must be placed in a facility that, at a minimum, will meet the needs for food, shelter, toileting, and essential medical care of that veteran." We believe that these requirements are essential. Although 38 U.S.C. 1742(a) provides that "[n]o payment * * * may be made to any [State] home * * * unless such home is determined by the Secretary to meet such standards as the Secretary [has] prescribe[d]" at 38 CFR part 51, subpart D, and part 52, subpart D, the minimum standards under proposed § 51.59(c)(1) should ensure that our veterans receive what is necessary despite the emergency and evacuation, without imposing requirements that may be impossible to meet during a crisis. Although it may not be feasible for VA to physically inspect such sites before veterans are evacuated, we would enforce the minimum-standard requirement by enabling VA to stop payment of per diem and/or recover all payments made while a veteran was placed at a site that does not meet the minimum standards. These standards would also apply when veterans are evacuated from facilities that are contracted for nursing home care under 38 U.S.C. 1720, for the reasons discussed above. As a matter of policy, it makes sense to permit a lower facility standard in the event of an emergency evacuation of a contract nursing home for the same reasons that it makes sense to allow the lower standard in the event of the emergency evacuation of a State home.

Proposed paragraph (c)(2) would identify certain facilities that may meet the minimum standards for facilities that would provide care for veterans evacuated from State home nursing homes. It would also provide in a note that, if none of the identified facilities under paragraph (c)(2) are available, other facilities may be used on a temporary basis if they meet the minimum standards under proposed paragraph (c)(1). Proposed paragraph (c)(3) would identify facilities that may meet minimum VA standards for purposes of providing care to veterans evacuated from a State home domiciliary. We note that the authority to continue payments for up to 30 days would be contingent upon proposed paragraph (e), which would require the director of the VAMC, or the director of the VISN in which the State home is located (if the VAMC director is not accessible), to determine that an emergency exists and that the evacuation facility meets the minimum standards set forth in proposed paragraph (c)(1). The director could thus disapprove continuation of VA per diem if the evacuation facility failed to meet the minimum standards.

We delegate this decision-making responsibility to the local authority, rather than to one, nationally centralized individual because we believe that local personnel will be better qualified to assess a regional need and determine whether an emergency exists and whether the evacuation facility meets the minimum standards set forth in proposed paragraph (c)(1).

Proposed paragraph (d) would make this section generally applicable to situations in which veterans in an adult day health care facility are evacuated due to an emergency. The standards and procedures are similar, but because adult day health care facilities are non-residential, the rules can be somewhat simpler and should be organized in a separate paragraph.

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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The proposed rule does not contain any collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

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 Office of Management and Budget (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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would 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 proposed amendment would not cause a significant economic impact, therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care, and 64.011 Veterans Dental Care.

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 7, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: March 17, 2011.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 17 and 51 are proposed to be amended as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

2. Add § 17.58 to read as follows:

§ 17.58 Evacuation of community nursing homes.

When veterans are evacuated from a community nursing home as the result of an emergency, they may be relocated to another facility that meets certain minimum standards, as set forth in 38 CFR 51.59(c)(1).

(Authority: 38 U.S.C. 501, 1720)

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

3. The authority citation for part 51 is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

4. Add § 51.59 to read as follows:

§ 51.59 Authority to continue payment of per diem when veterans are relocated due to emergency.

(a) *Definition of emergency.* For the purposes of this section, emergency means an occasion or instance where all of the following are true:

(1) It would be unsafe for veterans receiving care at a State home facility to remain in that facility.

(2) The State is not, or believes that it will not be, able to provide care in the State home on a temporary or long-term basis for any or all of its veteran residents due to a situation involving the State home, and not due to a situation where a particular veteran's medical condition requires that the veteran be transferred to another facility, such as for a period of hospitalization.

(3) The State determines that the veterans must be evacuated to another facility or facilities.

(b) *General authority to pay per diem during relocation period.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who resided in a State home, and for whom VA was paying per diem, if such veteran is evacuated during an emergency into a facility other than a VA facility if the State is responsible for providing or paying for the care. VA will not pay per diem payments under this section for more than 30 days of care provided in the evacuation facility, unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to return the veteran to a State home within the 30-day period, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran is or has been placed in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(c) *Selection of evacuation facilities.* The following standards and procedures apply to the selection of an evacuation facility in order for VA to continue to pay per diem during an emergency; these standards and procedures also apply to evacuation facilities when veterans are evacuated from a nursing home care facility in which care is being provided pursuant to a contract under 38 U.S.C. 1720.

(1) Each veteran who is evacuated must be placed in a facility that, at a minimum, will meet the needs for food, shelter, toileting, and essential medical care of that veteran.

(2) For veterans evacuated from nursing homes, the following types of facilities may meet the standards under paragraph (c)(1) of this section:

(i) VA Community Living Centers;

(ii) VA contract nursing homes;

(iii) Centers for Medicare and Medicaid certified facilities; and

(iv) Licensed nursing homes.

Note to paragraph (c)(2): If none of the above options are available, veterans may be evacuated temporarily to other facilities that meet the standards under paragraph (c)(1) of this section.

(3) For veterans evacuated from domiciliaries, the following types of facilities may meet the standards in paragraph (c)(1) of this section:

(i) Emergency evacuation facilities identified by the city or state;

(ii) Assisted living facilities; and

(iii) Hotels.

(d) *Applicability to adult day health care facilities.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who was receiving adult day health care, and for whom VA was paying per diem, if the adult day health care facility becomes temporarily unavailable due to an emergency. Approval of a temporary facility for such veteran is subject to paragraph (e) of this section. If after 30 days the veteran cannot return to the original adult day health care facility, VA will discontinue per diem payments unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to provide care at the original facility or to relocate an eligible veteran to a new facility, in which case such official will approve

additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran was provided adult day health care in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(e) *Approval of response.* Per diem payments will not be made under this section unless and until the director of the VAMC determines, or the director of the VISN in which the State home is located (if the VAMC director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets VA standards set forth in paragraph (c)(1) of this section.

(Authority 38 U.S.C. 501, 1720, 1742)

[FR Doc. 2011–6737 Filed 3–22–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0639; EPA–R01–OAR–2008–0641; EPA–R01–OAR–2008–00642; EPA–R01–OAR–2008–0643; A–1–FRL–9285–5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Maine, New Hampshire and Rhode Island; Infrastructure SIPs for the 1997 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the States of Connecticut, Maine, New Hampshire and Rhode Island. These submittals outline how each state's State Implementation Plan (SIP) meets the requirements of section 110(a) of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA. This SIP is commonly referred to as an infrastructure SIP. These actions are being taken under the Clean Air Act.

DATES: Written comments must be received on or before April 22, 2011.

ADDRESSES: Submit your comments, identified by EPA–R01–OAR–2008–00639 for comments pertaining to our proposed action for Connecticut, EPA–R01–OAR–2008–0641 for comments pertaining to our proposed action for Maine, EPA–R01–OAR–2008–06432 for comments pertaining to our proposed action for New Hampshire, or EPA–R01–OAR–2008–0643 for comments pertaining to our proposed action for Rhode Island, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* "Docket Identification Number EPA–R01–OAR–2008–0639, EPA–RO1–OAR–2008–0641, EPA–RO1–OAR–2008–642, or EPA–R01–OAR–2008–0643" Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID Numbers: EPA–R01–OAR–2008–0639 for comments pertaining to our proposed action for Connecticut, EPA–RO1–OAR–2008–0641 for comments pertaining to our proposed action for Maine, EPA–RO1–OAR–2008–0642 for comments pertaining to our proposed action for New Hampshire or EPA–RO1–OAR–2008–0643 for comments pertaining to our proposed action for Rhode Island. 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 through *http://www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

In addition, copies of the state submittal and EPA's technical support documents are also available for public inspection during normal business hours, by appointment at the respective State Air Agency: The Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017; Air Resources Division, Department of Environmental Services,

6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What action is EPA taking?
II. What is the background for this action?
III. What is EPA's evaluation of the States' submittals?
A. Emission Limits and Other Control Measures
B. Ambient Air Quality Monitoring/Data System
C. Program for Enforcement of Control Measures
D. Interstate Transport
E. Adequate Resources
F. Stationary Source Monitoring System
G. Emergency Power
H. Future SIP Revisions
I. Nonattainment Area Plan Under Part D
J. Consultation With Government Officials; Public Notification; PSD; and Visibility Protection
K. Air Quality Modeling/Data
L. Permitting Fees
M. Consultation/Participation by Affected Local Entities
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to approve submittals from the States of Connecticut, Maine, New Hampshire and Rhode Island as meeting the Section 110(a) infrastructure requirements of the Clean Air Act for the 1997 ozone standard.

II. What is the background for this action?

On July 18, 1997, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone based on 8-hour average ozone concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (see 62 FR 38856). The Clean Air Act (CAA or Act) requires State Implementation Plans (SIPs) meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. 42 U.S.C. 7410(a)(1) and (2). Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called "infrastructure" requirements. States were required to submit such SIPs for the 1997 standards to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standards created uncertainty about how to proceed, and certain States did not provide the required infrastructure SIP submission for this newly promulgated standard.

Section 110(a) imposes the obligation upon States to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the State develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the State's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, States typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

On October 2, 2007, EPA issued a guidance document entitled, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM2.5 National Ambient Air Quality Standards." This guidance noted that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.

The States of Connecticut, Maine, New Hampshire, and Rhode Island each submitted such certification letters to EPA on December 28, 2007, January 3, 2008, December 14, 2007 and December 14, 2007, respectively. All four submittals were deemed complete, effective April 28, 2008. (See 73 FR 16205; March 27, 2008.)

III. What is EPA's evaluation of the States' submittals?

EPA has reviewed the December 2007 submittal from Connecticut, the January 2008 submittal from Maine, the December 2007 submittal from New Hampshire, and the December 2007 submittal from Rhode Island. The Agency has determined that each state's SIP meets the section 110(a)(2) infrastructure requirements of the CAA and is consistent with the relevant EPA guidance. Each state's submittal and EPA's evaluation of that submittal are detailed in the following technical support documents (TSDs) which are available in the docket for these actions and at the EPA New England Regional Office referenced in the **ADDRESSES** section: (1) "Technical Support Document (TSD) for the Connecticut Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2)," dated March 9, 2011; (2)"Technical Support Document (TSD) for the Maine Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2)," dated March 10, 2011; (3) "Technical Support Document (TSD) for the New Hampshire Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2)," dated March 10, 2011; and (4) "Technical Support Document (TSD) for the Rhode Island Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2)," dated March 9, 2011.

In their submittals each state references items in their state specific laws, statutes, regulations and SIPs that address the elements detailed in section 110(a)(2) of the CAA. These elements and the corresponding subsection of the CAA are as follows:

Emission limits and other control measures (110(a)(2)(A));

Ambient air quality monitoring/data system (110(a)(2)(B));

Program for enforcement of control measures (110(a)(2)(C));

Interstate Transport (110(a)(2)(D)(ii));

Adequate resources (110(a)(2)(E));

Stationary source monitoring system (110(a)(2)(F));

Emergency power (110(a)(2)(G));

Future SIP revisions (110(a)(2)(H));

Consultation with government officials (110(a)(2)(J));

Public notification (110(a)(2)(J));

Prevention of significant deterioration (110(a)(2)(J));

Air quality modeling data (110(a)(2)(K));

Permitting fees (110(a)(2)(L)); and

Consultation/participation by affected local entities (110(a)(2)(M)).

In its submittal, Connecticut references the Connecticut Air Quality SIP, the Connecticut General Statues (CGS) and the Regulations of the Connecticut State Air Agency (RCSA). In its submittal, Maine references the Maine Air Quality SIP, the Code of Maine Regulations (CMR) and the Maine Revised Statutes Annotated (MRSA). In its submittal, New Hampshire references the New Hampshire Air Quality SIP, the New Hampshire Revised Statutes Annotated (RSA) as well as the New

Hampshire Rules Governing the Control of Air Pollution, and NH Admin. Rules Env-A 100 et seq. In its submittal, Rhode Island references the Rhode Island Air Quality SIP, the Rhode Island Air Pollution Control Regulations (RIAPCR) and the Rhode Island General Laws (RIGL).

The discussion below summarizes how each state meets each relevant CAA infrastructure requirement outlined above.

A. Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. Each state's infrastructure submittal includes a list of regulations that have been previously adopted by the state and approved by EPA which include specific emission limits and the framework for implementation of these limits. The specific details of each state's submittal and EPA analysis of the submittal for this element is stated in the TSD for each state. Also, a table containing each regulation and the citation of EPA's approval of this regulation is included in the Appendix of each state's TSD.

EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Connecticut, Maine, New Hampshire, and Rhode Island have included some SIP provisions originally submitted in response to part D in its submission documenting its compliance with the infrastructure requirements of section 110(a)(2). These states have over time continually updated the elements of their SIPs addressing the ozone NAAQS, and the provisions reviewed here are a weave of SIP revisions submitted in response to the infrastructure requirements of section 110(a)(2) and the nonattainment requirements of part D.

For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D solely for the purposes of determining whether they support a finding that the state has met the basic infrastructure requirements under section 110(a)(2). For example, in response to the requirement to have enforceable emission limits under section 110(a)(2)(A), Connecticut, Maine, New Hampshire, and Rhode Island cited to several rules that were submitted to meet the Reasonably Available Control Technology (RACT) requirement of part D. EPA is here approving those rules as meeting the requirement to have enforceable emission limits on ozone precursors; any judgment about whether those emission limits discharge the state's obligation to impose RACT under part D was or will be made separately, in an action reviewing those rules pursuant to the requirements of part D.

Also, in this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance,[1] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In addition, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

The Connecticut submittal cites 16 specific rules the state adopted to control the emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X). In addition the State of Connecticut has also adopted the California-Low Emission Vehicle standard for automobiles.

The Maine submittal cites over 20 specific rules the state adopted to control the emissions of VOCs and NO_X.

The New Hampshire submittal cites a general overview of the RSA, Chapters: Env-A 300, 600, 700, 1200, and 3200 of their air quality regulations, and five specific rules for the control the emissions of VOCs and NO_X. In addition, they also cite several rules for the control of control the emissions of VOCs and NO_X from automobiles.

The Rhode Island submittal cites 15 specific rules the state adopted to control the emissions of VOCs and NO_X.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(A) for the 1997 8-hour ozone standard.

B. Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Connecticut, Maine, New Hampshire and Rhode Island all operate ambient air quality monitors and submit the data collected to EPA. All four states have submitted annual air monitoring network plans which have been approved by EPA as follows: Connecticut (submitted on August 16, 2010, approved by EPA on August 31, 2010); Maine (submitted on June 30, 2010, approved by EPA on July 7, 2010); New Hampshire (submitted on September 7, 2010, approved by EPA on October 13, 2010); and Rhode Island (submitted on July 12, 2010, approved by EPA on July 13, 2010).

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(B) for the 1997 8-hour ozone standard.

C. Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) requirements.

In this action, EPA is not evaluating nonattainment-related provisions, such as the NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

Also, in this action, EPA is not proposing to approve or disapprove any state rules with regard to the NSR Reform requirements. EPA will act on SIP submittals that are made for purposes of addressing NSR Reform through a separate rulemaking process.

EPA has determined that Connecticut's, Maine's, New Hampshire's, and Rhode Island's minor NSR programs adopted pursuant to

[1] Memorandum to EPA Air Division Directors, from Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (August 11, 1999).

section 110(a)(2)(C) of the Act regulate ozone precursor emissions. EPA is concerned that certain provisions of some states' minor NSR programs adopted pursuant to section 110(a)(2)(C) of the Act might not meet all the requirements found in EPA's regulations implementing that provision. See 40 CFR 51.160–51.164. EPA previously approved all four states minor NSR programs into the SIP, and there was at the time no objection to the provisions of these programs. For Connecticut, 58 FR 10987 (Feb. 23, 1993); for Maine, 45 FR 6786 (Jan. 30, 1980); for New Hampshire, 51 FR 10863 (March 15, 1983); and for Rhode Island, 48 FR 29690, (June 28, 1983). Since then, the states and EPA have relied on the existing state minor NSR programs to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

Therefore, in this action, EPA is proposing to approve Connecticut's, Maine's, New Hampshire's, and Rhode Island's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

As further discussed in the TSDs, and each states's respective submittal, each state cites specific sections of their rules and regulations that show how the state meets the requirements for this element.

The Connecticut submittal cites several sections of the CGS (see CGS Sections 22a–171, 22a–174, 22a–175, 22a–176 and 22a–178)) and several regulations of the RCSA (see RSCA 22a–174–3a and RSCA 22a–174–12), including a program to meet minor source NSR and PSD requirements. Connecticut's 110 submittal meets the requirements of CAA Section 110(a)(2)(C), with the following exception which is currently being addressed. EPA previously noted that Connecticut's PSD program had a deficiency because the state did not have the authority to implement the PSD permitting program with respect to greenhouse gas (GHG) emissions. (See 75 FR 77698; December 13, 2010.) Connecticut proposed rule revisions to address this deficiency and EPA proposed approval of those revisions through parallel processing procedures on January 6, 2011 (76 FR 752). On February 9, 2011, Connecticut submitted a final SIP revision addressing this deficiency. Final approval of Connecticut's GHG SIP revision is expected prior to final approval of Connecticut's section 110 infrastructure submittal. Therefore, EPA is proposing to fully approve this element for Connecticut.

The Maine submittal cites 38 MRSA § 347–A and C, § 348, and § 349 which provides the Maine DEP with civil and criminal enforcement authorities, including the authority to assess penalties. In addition Maine cites, CMR Chapter 100 Definitions and Regulations and CMR Chapter 115 Emission License Regulation, which contains the regulations for minor source NSR and PSD programs. Maine's submittal meets the requirements of CAA section 110(a)(2)(C). EPA previously noted that there was a deficiency in Maine's PSD program because the state does not have adequate resources to implement the PSD permitting program with respect to GHG emissions. (*See* 75 FR 82536, December 30, 2010). Maine DEP has adopted revisions to its program to address this deficiency, but has not yet submitted these rules to EPA. In that same December 30, 2010 action, EPA issued a SIP error correction withdrawing EPA's approval of Maine's PSD program to the extent it applies to increases in GHG emissions below the thresholds in EPA's tailoring rule revisions to the federal PSD program in the so-called "narrowing rule." Ibid. On March 10, 2011, Maine submitted a letter to EPA stating that in evaluating its section 110 infrastructure submittal, EPA should consider the state's PSD program as currently approved in the SIP and as corrected by EPA's December 30, 2010 narrowing rule. Therefore, EPA is proposing to fully approve this element for Maine for the purposes of meeting the infrastructure requirements of section 110(a)(2)(C). EPA will address how the state's newly adopted PSD rules implement GHG requirements in a separate action.

The New Hampshire submittal cites the RSA and ENV–A (see RSA 125–C:4, 125–C:11, and 125–C:15, and ENV–A 618 and ENVA–619), including a program for the minor source NSR and PSD programs. New Hampshire's submittal meets the requirements of CAA section 110(a)(2)(C). EPA previously noted that there was a deficiency in New Hampshire's PSD program because the state does not have adequate resources to implement the PSD permitting program with respect to GHG emissions. 75 FR 82536 (December 30, 2010). New Hampshire submitted a SIP revision to its program to address this deficiency on February 7, 2011. EPA is reviewing this submittal. On March 8, 2011, New Hampshire submitted a letter to EPA stating that in evaluating its section 110 infrastructure submittal, EPA should consider the revised rules. Therefore, EPA is proposing to fully approve this element for New Hampshire for the purposes of meeting the infrastructure requirements of section 110(a)(2)(C). EPA will address how the state's newly adopted PSD rules implement GHG requirements in a separate action.

The Rhode Island submittal cites sections 23–23–10, 23–23–11 and 23–23–14 of the RIGL, which provide DEM with civil and criminal enforcement authorities, including the authority to assess penalties. In addition, RI APCR No. 9 Air Pollution Control Permits, which has been approved into the RI SIP, includes the requirements to implement the PSD permitting program and includes the minor source NSR provisions. Rhode Island's submittal meets the requirements of CAA section 110(a)(2)(C). EPA previously noted that there was a deficiency in Rhode Island's PSD program, because the state does not have adequate resources to implement the PSD permitting program with respect to GHG emissions. 75 FR 82536 (Dec. 30, 2010). Rhode Island DEM submitted a SIP revision to its program to address this deficiency on January 18, 2011. On March 3, 2011, Rhode Island submitted a letter to EPA stating that in evaluating its section 110 infrastructure submittal, EPA should consider the revised rules. Therefore, EPA is proposing to fully approve this element for Rhode Island for the purposes of meeting the infrastructure requirements of section 110(a)(2)(C). EPA will address how the state's newly adopted PSD rules implement GHG requirements in a separate action.

D. Interstate Transport

Section 110(a)(2)(D)(i) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. This action does not address the requirements of 110(a)(2)(D)(i), which have been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147).

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source

Connecticut's PSD regulations provide for notice to most of the parties consistent with the requirements in the EPA PSD program, although there is no specific mandate that affected states receive notice. Connecticut in fact issues extensive notice of its draft permits, and neighboring states consistently get copied on those drafts. Connecticut has no pending obligations under section 115 or 126(b) of the Act. The CT DEP procedures meet the requirements of CAA Section 110(a)(2)(D)(ii).

Maine is required to give notice of draft PSD permits that meet the requirements in our regulations. Maine's SIP-approved Chapter 115 requires the state to provide a "copy of the public notification and a copy of the draft order to the U.S. Environmental Protection Agency, Region I, the chief executives of the municipality and county where the source proposes to locate, any comprehensive land use planning agency, and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification." Maine also has no pending obligations under section 115 or 126(b) of the Act. Maine's SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

New Hampshire is required to give notice of draft PSD permits that meet the requirements in our regulations. New Hampshire specifically defers to 40 CFR part 52 for the process by which PSD permits are issued. Env-A 205.03. 40 CFR part 52 effectively incorporates the requirements of 40 CFR Part 124—which include affected state notice. 40 CFR 124.10(c)(1)(iii), (vii) & (x). New Hampshire has no pending obligations under section 115 or 126(b) of the Act. New Hampshire SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

Rhode Island's Air Pollution Control Regulation No. 9, "Air Pollution Control Permits," which has been approved into the RI SIP provides for notice to nearby States. (See 9.12.3.) Rhode Island has no pending obligations under section 115 or 126(b) of the Act. Rhode Island's SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

E. Adequate Resources

Section 110(a)(2)(E) requires states to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues.

As further explained in each state's TSD and respective submittal, each state cites specific sections of their rules and regulations that show how the state meets the requirements for this element.

Connecticut cites its state law (*see* CGS Section 22a–171) and its SIP, Chapter 11, Parts A–E which describe the (A) existing organizations, (B) manpower, (C) funding, (D) physical resources and (E) local agencies. It states, in part, "The Department of Environmental Protection will secure appropriations sufficient, in conjunction with federal assistance, to maintain the projected state funding levels."

Maine cites its state law (*see* 38 MRSA § 341–A. 38 MRSA § 341–D 38 MRSA § 342 and 38 MRSA § 581) and its original 1972 SIP Chapter 8, documenting the existence of adequate resources. For FY 2007 (the year cited in its submittal), the Maine Bureau of Air Quality had a staff of 59, and a budget of $5.5 million.

New Hampshire cites the RSA 125 C:6, which authorizes the NHDES Commissioner to enforce the state's air laws, establish a permit program, accept and administer grants, and exercise all incidental powers necessary to carry out the law, and RSA 125 C:12, which authorizes the Commissioner to collect fees to recover the costs of reviewing and acting upon permit applications. In addition New Hampshire cites its original 1972 SIP which describes the (A) existing organizations; (B) manpower; (C) funding; and (D) physical resources.

Rhode Island cites § 23–23–5 of the RIGL which provides the Director of DEM with the legal authority to enforce air pollution control requirement, and § 23–23–5 of the RIGL which provides for the assessment of operating permit fees from air emissions sources, allows for DEM to assess preconstruction permit fees and establishes a general revenue reserve account within the general fund to finance the state clean air programs. In addition, RI DEM referred to its regulations implementing its operating permit program pursuant to 40 CFR part 70. RI APCR No. 28, "Operating Permit Fees," requires major sources to pay annual operating permit fees. Finally, Section III of the 1972 RI SIP specifies the RI DEM's legal authority to implement SIP measures and Section VII of the 1972 SIP describes the resources and manpower estimates for the RI DEM.

As discussed above, EPA has previously determined that Maine, New Hampshire, and Rhode Island would not have adequate resources to implement the PSD permitting program with respect to GHG emissions without adopting rules to limit the number of GHG sources that require PSD permits. A complete discussion of this issue is provided above in Section III.C. of this rule. All three state environmental agencies adopted programs to address this deficiency. Therefore, EPA is proposing to fully approve this element.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(E) for the 1997 8-hour ozone standard.

F. Stationary Source Monitoring System

Section 110(a)(2)(F) of the CAA requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Connecticut's, Maine's, New Hampshire's, and Rhode Island's infrastructure submittals reference the specific regulations that were previously adopted by the state and approved by EPA which require sources to monitor emissions and submit reports. The specific rules, along with a citation to EPA's approval of each rule, is included in the TSD for each state. For example, Rhode Island's submittal references the following: (1) APCR No. 9, "Air Pollution Control Permits," which requires emissions testing of permitted processes within 60 days of full operation and specifies that preconstruction permits issued contain an emissions testing section; (2) APCR No. 14, "Record Keeping and Reporting," which requires emission sources to report annually emissions and other data to RI DEM; and (3) APCR No. 27, "Control of Nitrogen Oxide Emissions," which requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors. As detailed in the TSD's, similar rules and regulations

have been adopted by Connecticut, Maine, and New Hampshire.

Connecticut, Maine, New Hampshire, and Rhode Island all meet the requirements for Section 110(a)(2)(F) for the 1997 8-hour ozone standard.

G. Emergency Power

Section 110(a)(2)(G) of the CAA requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. Connecticut's, Maine's, New Hampshire's, and Rhode Island's infrastructure submittals reference the specific state legislation that gives each state authority to order a source to cease operations if it is determined that emissions from the source pose an immediate danger to public health or safety. In addition, Connecticut, Maine, and Rhode Island have adopted emergency episode regulations, consistent with the requirements of 40 CFR part 51, subpart H, sections 51.150 through 51.153, which have been previously approved by EPA. (See TSDs for state regulation and EPA approval citations.)

New Hampshire has broad statutory authority (see RSA 125–C:9 Authority of the Commissioner in Cases of Emergency) to address activities causing imminent and substantial endangerment to public health; however, New Hampshire does not have regulations that specifically address all the 40 CFR part 51 subpart H requirements. But New Hampshire, as a matter of practice, does the following in response to elevated ozone levels. Through the EPA AIRNOW and EPA ENVIROFLASH systems, the New Hampshire DES posts on the internet forecasted ozone levels statewide for each day. Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in New Hampshire, the media are alerted, through a press release, and the National Weather Service is alerted to issue an Air Quality Advisory through the normal National Weather Service weather alert system. This is similar to the notification and communication requirements of 40 CFR 151.152. Therefore, EPA is proposing to fully approve this element for New Hampshire.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(G) for the 1997 8-hour ozone standard.

H. Future SIP Revisions

Section 110(a)(2)(H) of the CAA requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. Connecticut's infrastructure submittal references the SIP and CGS which requires the SIP to be a dynamic and not static document that is to be revised as necessary. Maine's infrastructure submittal references the MRSA, which requires, the adoption, amendment or repeal of reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the environmental department is charged with administering. New Hampshire's infrastructure submittal references, RSA 125–C:6 Powers and Duties of the Commissioner, which requires the commissioner to develop "a comprehensive program and provide services for the study, prevention and abatement of air pollution." Rhode Island's infrastructure submittal references, § 23–23–5 of the RIGL, which allows the Director of RI DEM to "make, issue, and amend rules and regulations * * * for the prevention, control, abatement, and limitation of air pollution." In addition, it should be noted that all four states have made numerous SIP revisions for both the previous 1-hour ozone standard and the 1997 8-hour ozone NAAQS.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(H) for the 1997 8-hour ozone standard.

I. Nonattainment Area Plan Under Part D

Section 110(a)(2)(I) of the CAA requires that each such plan shall "in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas)." EPA is not evaluating nonattainment-related provisions, such as the NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

J. Consultation With Government Officials; Public Notification; PSD; and Visibility Protection

Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation.

Connecticut's infrastructure submittal references CGS Section 22a–171, Duties of Commissioner of Environmental Protection, which requires the commissioner to "advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter." In addition Connecticut has a State Implementation Plan Revision Advisory Committee (SIPRAC) which was established in 1972, and generally meets each month in Hartford. The meeting notices are posted on the CT DEP Web site and the agenda is also available on the Web site. The SIPRAC committee discusses relevant air quality issues, such as air quality permits, state and national regulation revisions and SIP changes.

Maine's infrastructure submittal references the MRSA and CMR. Specifically 06–096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations, Section 4A(d) establishes consultation requirements with Federal Land Managers for NSR and PSD, which requires, "The applicant and/or the Department shall notify and provide a copy of the application to all Federal Land Managers listed in Chapter 100 of the Department's regulations, and the Indian governing body of any reservation located within 50 km of any Major Modification or new Major source on or before the date the applicant provides Notice of Intent to File to the public, and provide at least a thirty (30) days public comment period."

New Hampshire's infrastructure submittal references state laws and regulations, specifically, RSA 125–C:6 Powers and Duties of the Commissioner, which requires: Consulting, and cooperating with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality; encouraging local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution and coordinating and regulating the air pollution control programs of political

subdivisions of the state and entering agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution.

Rhode Island's submittal references § 23–23–5 of the RIGL which specifies that the RI DEM Director shall "advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter."

Section 110(a)(2)(J) of the CAA further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Connecticut, Maine, New Hampshire, and Rhode Island are all state partners participating in EPA's AIRNOW and EnviroFlash Air Quality Alert programs. See *http://www.airnow.gov.* Through this program, states provide near real-time air quality data, as well as next day forecasts, to the public. Individuals and organizations may also sign up to receive e-mail alerts when poor air quality is predicted in their area.

Section 110(a)(2)(J) of the CAA also requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection. With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes CAA sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective. We are, however, evaluating the infrastructure submittals with respect to the applicable PSD program requirements under 110(a)(2)(C). A complete discussion of this issue is provided above in Section III.C. of this rule.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(J) for the 1997 8-hour ozone standard.

K. Air Quality Modeling/Data

Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

As further explained in each state's TSD, all four states reference the relative portions of their laws, regulations and SIPs that require modeling from new or modified sources of air pollution, and the general authority for the state to conduct air quality analyses. Connecticut, New Hampshire and Rhode Island have submitted 8-hour ozone attainment demonstrations to EPA as required under the CAA for ozone nonattainment areas classified moderate and above. Maine was not required to submit an 8-hour ozone attainment demonstration, because the nonattainment areas in Maine were not classified as moderate or higher. In addition, all four states are members of and participate in the ozone attainment demonstration modeling efforts conducted by the Ozone Transport Commission.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(K) for the 1997 8-hour ozone standard.

L. Permitting Fees

Section 110(a)(2)(L) of the CAA requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit until such fee requirements are superseded by EPA's approval of a title V operating permit program with a fee program consistent with the Act. None of these states' title V operating permit programs is formally approved into the state's SIP. However, the operating permit program is a legal mechanism the state can use to ensure that it has sufficient resources to support the air program, consistent with the requirements of section 110(a)(2)(L).

EPA's full approval of Connecticut's title V program became effective on May 31, 2002. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Connecticut's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Connecticut collects sufficient fees to administer the title V permit program.

EPA's full approval of Maine's title V program became effective on December 17, 2001. Before EPA can grant full approval, the state must demonstrate the ability to collect adequate fees. On October 23, 1995, Maine submitted a detailed fee demonstration in accordance with 40 CFR 70.9. The detailed fee demonstration was part of EPA's full approval. Maine collects adequate fees for Title V sources. The statute also allows the state to collect fees from new Title V sources, which meets the requirements of section 110(a)(2)(L).

EPA's full approval of New Hampshire's title V program became effective on November 23, 2001. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. New Hampshire's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). New Hampshire collects sufficient fees to administer the title V permit program.

EPA's full approval of Rhode Island's title V program became effective on November 30, 2001. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Rhode Island's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Rhode Island collects sufficient fees to administer the title V permit program.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(L) for the 1997 8-hour ozone standard.

M. Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) of the CAA requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. The Connecticut infrastructure submittal references state law (*see* CGS Section 4–168) and Chapter 12 of the original 1972 Connecticut SIP, which require consultation and coordination with local entities. In addition, the Connecticut State Implementation Plan Revision Advisory Committee (SIPRAC) established in 1972 generally meets each month in Hartford. The meeting notices are posted on the Connecticut DEP Web site and the agenda is also available on the Web site. SIPRAC discusses relevant air pollution issues and regulations with all interested parties, including EPA. Maine's infrastructure submittal references state law (*see* 5 MRSA Chapter 375, Subchapter 2 and 38 MRSA § 597) and Chapter 9 of the original 1972 SIP, which requires consultation and coordination with local entities. New Hampshire's infrastructure submittal references state regulations (*see* RSA 125–C:6 Powers and Duties of the Commissioner), which requires consultation and coordination with local entities. Rhode Island's infrastructure submittal references

section 23–23–5 of the RIGL which provides for the RI DEM Director "to advise, consult, and cooperate with the cities and towns and other agencies of the State, Federal government, and other states and interstate agencies * * *"

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(M) for the 1997 8-hour ozone standard.

IV. Proposed Action

EPA is proposing to find that the current SIPs for the States of Connecticut, Maine, New Hampshire and Rhode Island meet the infrastructure elements and the corresponding subsection of the CAA listed below for the 1997 8-hour ozone standard:

Emission limits and other control measures (110(a)(2)(A));

Ambient air quality monitoring/data system (110(a)(2)(B));

Program for enforcement of control measures (110(a)(2)(C));

Interstate Transport (110(a)(2)(D)(ii));

Adequate resources (110(a)(2)(E));

Stationary source monitoring system (110(a)(2)(F));

Emergency power (110(a)(2)(G));

Future SIP revisions (110(a)(2)(H));

Consultation with government officials (110(a)(2)(J));

Public notification (110(a)(2)(J));

Prevention of significant deterioration (110(a)(2)(J));

Air quality modeling data (110(a)(2)(K));

Permitting fees (110(a)(2)(L)); and

Consultation/participation by affected local entities (110(a)(2)(M)).

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this action and if that provision may be severed from the remainder of the action, EPA may adopt as final those provisions that are not the subject of an adverse comment. In addition, EPA may take final action on one or more of these state's submittals separately, depending on the circumstances involved with each state's submittal.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 15, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2011–6870 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0315, FRL–9285–6]

Approval and Promulgation of Implementation Plans; Washington: Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct errors in the State Implementation Plan (SIP) for the State of Washington regarding the scope of certain regulations incorporated by reference into the SIP. This correction would limit the applicability of certain regulations to pollutants for which National Ambient Air Quality Standards (NAAQS) have been established and precursors to those NAAQS pollutants. It would thus ensure that these regulations are reasonably related to attainment or maintenance of the NAAQS in Washington.

DATES: Comments must be received on or before April 22, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0315, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: R10-Public_Comments@epa.gov.*
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin

Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2011–0315. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553–6357, e-mail address: *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

Table of Contents

I. What action is EPA proposing?
II. What is the basis for the action that EPA is proposing?
III. Statutory and Executive Order Reviews

I. What action is EPA proposing?

Section 109 of the Clean Air Act (CAA) requires EPA to promulgate regulations establishing national ambient air quality standards (NAAQS) for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the CAA (referred to as criteria or NAAQS pollutants). EPA has set NAAQS for six pollutants: sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, ozone and lead at 40 CFR part 50. EPA has identified ammonia, volatile organic compounds, nitrogen oxides, and sulfur dioxide as precursors to one or more of these NAAQS pollutants. *See* CAA 302(g); 40 CFR 51.1000. Section 110 of the CAA requires States to adopt and submit to EPA for approval State Implementation Plans (SIPs) to implement, maintain, and enforce the NAAQS. In general, State and local regulations approved by EPA into the SIP under Section 110 of the CAA must reasonably relate to attainment and maintenance of the NAAQS. See generally CAA 110; see also Memorandum from Michael A. James, EPA, to Regional Counsels, Re: Status of State/Local Air Pollution Control Measures Not Related to NAAQS, dated February 7, 1979 ("measures to control non-criteria pollutants [pollutants that are not NAAQS pollutants or their precursors] may not legally be made part of a SIP.").[1]

In several instances in the past, EPA has approved into the Washington SIP general air pollution regulations that cover a broader range of air pollutants than NAAQS pollutants or their precursors. To the extent EPA's prior approvals of these general provisions did not distinguish between those pollutants that reasonably relate to attainment and maintenance of the NAAQS (that is, NAAQS pollutants and their precursors), such approvals were overly broad, approved in error, and should be corrected.

EPA is therefore proposing to correct its previous approval of the following provisions of the Washington SIP to make clear that EPA's approval of such regulations is limited to application of these requirements to air pollutants that are NAAQS pollutants or precursors to a NAAQS pollutant:

Department of Ecology (Ecology): WAC 173–400–040 (except WAC 173–400–040(1)(c), (1)(d), (2), (4) and the second paragraph of (6)[2]) (state effective 9/20/93; EPA effective 6/2/95);

Energy Facility Site Evaluation Council (EFSEC): WAC 463–39–005(1) (EFSEC's incorporation by reference of WAC 173–400–040, except for WAC 173–400–040(1)(c), (1)(d), (2), (4) and the second paragraph of (6)) (state effective 9/21/95; EPA effective 7/22/96);

Northwest Clean Air Authority (NWCAA): NWCAA Sec. 104.1 (NWCAA's incorporation by reference of WAC 173–400–040 except for WAC 173–400–040(1)(c), (1)(d), (2), (4) and the second paragraph of (6)) (state effective 11/13/94; EPA effective 12/26/95);

Puget Sound Clean Air Agency (PSCAA): PSCAA Reg. I, Sec. 304 (except for Reg. 1, Sec. 304(e)) (state effective 3/11/99; EPA effective 9/30/04);

Southwest Clean Air Agency (SWCAA): SWCAA Sec. 400–040 (except SWCAA Sec. 400–040(1)(c), (1)(d), (2), (4), and (6)(a)) (state effective 9/21/95; EPA effective 4/28/97);

Yakima Regional Clean Air Authority (YRCAA): YRCAA Article V, Section 5.06 (state effective 12/15/95; EPA effective 3/4/98); Section 5.12 (state effective 12/15/95; EPA effective 3/4/98); Section 12.01 (YRCAA's incorporation by reference of WAC 173–400–040 except WAC 173–400–040(1)(c), (1)(d), (2), (4) and the second paragraph of (6)) (state effective 12/15/95; EPA effective 3/4/98).

In a letter dated March 10, 2011, Ecology and SWCAA stated their support of EPA's approval of this correction and narrowing of the Washington SIP.

II. What is the basis for the action that EPA is proposing?

Under section 110(k)(6) of the CAA, whenever EPA determines that its action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation,

[1] Of course, SIP approved Prevention of Significant Deterioration programs must cover any "regulated NSR pollutant," see 40 CFR 52.21(b)(50), which definition includes more than NAAQS pollutants and NAAQS precursors.

[2] The excepted provisions have not been approved into the Washington SIP for any air pollutant.

redesignation, classification, or reclassification was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Pursuant to section 110(k)(6), EPA is proposing to find that its approval of these State and local provisions was in error, and to clarify and, as necessary, narrow its approval of certain regulations in the Washington SIP so that EPA's approval of those regulations as part of the Washington SIP is limited to their application to those pollutants that are reasonably related to attainment or maintenance of the NAAQS, that is, NAAQS pollutants and their precursors. EPA has previously similarly relied on section 110(k)(6) of the CAA to remove from other States' SIPs provisions that do not relate to attainment or maintenance of the NAAQS or to narrow SIP provisions consistent with CAA requirements. *See, e.g.,* 75 FR 2440 (January 15, 2010) (removing from Kentucky SIP rule regulating hazardous air pollutants); 74 FR 27442 (June 10, 2009) (removing from the Indiana SIP provisions relating to hazardous air pollutants); 73 FR 21546 (April 22, 2008) (removing the word "odor" from the definition of air contaminant in the New York SIP); 70 FR 58311 (October 6, 2005) (removing from the Idaho SIP a cross-reference to toxic air pollutants); 66 FR 57391 (November 15, 2001) (removing from the Missoula City-County portion of the Montana SIP provisions relating to, among other things, fluoride emission standards); see also Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule, 75 FR 82536, 82543–44 (Dec. 30, 2010) (relying on the authority of CAA 110(k)(6) to narrow the scope of Federal approval of State Prevention of Significant Deterioration (PSD) SIP provisions to ensure that federally enforceable requirements of the PSD programs of these States did not apply at lower thresholds for greenhouse gases than those under Federal PSD requirements in the Tailoring Rule).

Narrowing EPA's approval of these regulations to NAAQS pollutants and their precursors will have no affect on Washington's ability to demonstrate attainment and maintenance of the NAAQS or to meet any other requirement of the CAA.

III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Washington,[3] and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: March 16, 2011.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2011–6872 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

[3] The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[WC Docket No. 11–39; FCC 11–41]

Implementation of the Truth in Caller ID Act of 2009

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission proposes rules to implement the Truth in Caller ID Act of 2009. The proposed rules prohibit caller ID spoofing done with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Commission also seeks comments that will assist the Commission in preparing a statutorily required report to Congress on whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications services or IP-enabled voice services.

DATES: Comments are due on or before April 18, 2011 and reply comments are due on or before May 3, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No. 11–39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *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: Lisa Hone, Wireline Competition Bureau, Competition Policy Division, 202–418–1580.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 18, 2011 and reply comments on or before May 3, 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. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*or the Federal *eRulemaking Portal: http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Filings and comments are also 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. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Below is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 11–39, adopted March 9, 2011, and released March 9, 2011.

Synopsis of Further Notice of Proposed Rulemaking

1. In this NPRM, the Commission seeks comment on proposed rules to implement the Truth in Caller ID Act of 2009 (Truth in Caller ID Act, or Act), signed into law on December 22, 2010. Caller ID services identify the telephone numbers and sometimes the names associated with incoming calls. The Truth in Caller ID Act prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Truth in Caller ID Act requires the Commission to issue implementing regulations within six months of the law's enactment. It also requires the Commission, by the same date, to submit a report to Congress on "whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications services or IP-enabled voice services."

2. In order to implement the Truth in Caller ID Act, the Commission proposes to (i) add a section to the Commission's current rules governing Calling Party Number (CPN) services, and (ii) enhance the Commission's forfeiture rules. The proposed additions to the Commission's CPN rules are modeled on the Act's prohibition against engaging in caller ID spoofing with fraudulent or harmful intent, and include the statutory exemptions to the prohibition. The proposed rules also include new definitions. The proposed amendments to the Commission's forfeiture rules implement the forfeiture penalties and forfeiture process provided for in the Act.

A. Proposed Amendments to the Commission's Rules Relating to Calling Party Numbers

3. The Commission proposes rules that would prohibit any person or entity in the United States, with the intent to defraud, cause harm, or wrongfully obtain anything of value, from knowingly causing, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information. The Act's prohibition is directed at spoofing "in connection with any telecommunications service or IP-enabled voice service." The proposed rules define "caller identification service" and "caller identification information" to encompass both types of calls; therefore, the proposed rules would apply to calls made using both types of services. The Commission seeks comment on this approach, and whether the Commission needs to take any other steps to ensure that calls made using telecommunications services and interconnected VoIP services are covered by the proposed rules.

4. The Commission also seeks comment on the use of the word "knowingly" in the statute and our proposed rules. The statutory language prohibits anyone from "causing any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm or wrongfully obtain anything of value" and could be read to require knowledge by either the caller identification service or the actor employing the caller identification service. However, in many instances, the caller identification service has no way of knowing whether or not the

caller identification information it receives has been manipulated. The proposed rules thus focus on whether the caller has knowingly manipulated the caller identification information that is seen by the call recipient in order to defraud, cause harm, or wrongfully obtain anything of value. Our proposed rules provide that the person or entity prohibited from "knowingly" causing transmission or display of inaccurate or misleading caller identification is the same person or entity that must be acting with intent to defraud, cause harm, or wrongfully obtain anything of value. The proposed rules address both transmitting and displaying inaccurate caller identification information to make clear that, even if a carrier or interconnected VoIP provider transmits accurate caller identification information, it would be a violation for a person or entity to cause a device that displays caller identification information to display inaccurate or misleading information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Commission seeks comment on whether these proposed rules accurately reflect Congress' intent. Are there any changes to the proposed rules that would improve how this prohibition is expressed?

5. The Commission also seeks comment on whether the proposed prohibition on causing any caller identification service to transmit or display "misleading or inaccurate" caller identification information with the "intent to defraud, cause harm, or wrongfully obtain anything of value" provides sufficiently clear guidance about what actions are prohibited. Do the proposed rules provide the public with "ascertainable certainty" about what would constitute a violation of the Act? Are the terms used in the proposed rules sufficiently well understood concepts that the public reasonably should know which actions are prohibited? For example, must the legal elements of common law "fraud" be met for a finding of intent to "defraud" under the Commission's proposed rules? Are there other statutes that provide relevant and well-defined standards for what it means to "defraud" someone? To the extent that greater specification is desirable, how should the proposed rules be changed to provide the desired clarity while remaining faithful to Congress' intent? The Commission also seeks comment on the different methods that a person or entity can employ to cause a caller identification service to transmit misleading or inaccurate information, and whether our proposed rules adequately encompass all such methods.

6. *Definitions.* The Act specifies that "IP-Enabled Voice Service" has the same meaning as § 9.3 of the Commission's regulations (47 CFR 9.3). The Commission's regulations define "Interconnected VoIP service" rather than "IP-Enabled Voice Services." Although the Act's use of a term other than the one set forth in the Commission's regulations might allow other interpretations, the Act's specific reference to the Commission's rule defining interconnected VoIP service indicates that Congress intended the scope of the caller ID spoofing prohibition to track the Commission's definition of interconnected VoIP service. Consequently, the proposed rules use the term "Interconnected VoIP service" and specify that it has the same meaning given the term "Interconnected VoIP service" in 47 CFR 9.3 as it currently exists or may hereafter be amended. The Commission seeks comment on this proposal. The Department of Justice (DOJ) has suggested that the Commission could instead model a definition of IP-enabled voice service on the definition of that term in 18 U.S.C. 1039(h)(4). DOJ's proposed definition is broader than the Commission's and would not require the user to have a broadband connection, and would not require that users be able to originate traffic to *and* terminate traffic from the public switched telephone network. The Commission seeks comment on DOJ's suggestion, and on other suggestions for defining "IP-Enabled Voice Service," including the advantages and disadvantages of adopting a particular definition. Commenters should also explain how such an interpretation is in accord with the reference to 47 CFR 9.3 in the statute.

7. The Commission proposes defining "Caller identification information" to mean "information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VoIP service," and defining "Caller identification service" to mean "any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VoIP service. Such term includes automatic number identification services." The Commission's proposed rules adopt the definitions in the Act, except that, as described above, the proposed definitions use the term "interconnected VoIP services" instead of "IP-enabled voice services."

8. The Commission seeks comment on whether the definitions of "Caller identification information" and "Caller identification service" in the proposed rules are sufficiently clear. Are there services other than traditional caller ID services (*i.e.,* services that terminating carriers and Interconnected VoIP provide to their subscribers) that are, or should be, included within the definition of "Caller identification service"? For example, spoofing caller identification information transmitted to emergency services providers is a particularly dangerous practice, and one which Congress was particularly concerned about when adopting the Truth in Caller ID Act. Should the delivery of caller identification information to E911 public safety answering points, which use automatic number identification (ANI) to look up the caller's name and location information on emergency calls, be considered a type of "Caller identification service" for purposes of our rules? What are the benefits and drawbacks to including information about calling parties provided to E911 public safety answering points as "Caller identification information?"

9. The term "Caller identification service" in the Act explicitly includes "automatic number identification services." The Commission's current rules relating to the delivery of CPN services define ANI as the "delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users. We seek comment on whether we should use a different definition of ANI for purposes of the Truth in Caller ID Act. In particular should we include in the proposed rules a definition of ANI that encompasses charge party numbers delivered by interconnected VoIP providers? What are the consequences of referencing automatic number identification services in the definition of "Caller identification service," but not in the definition of Caller identification information?

10. The Act and proposed rules define "Caller identification Information" and "Caller identification service" to include "the telephone number of, or other information regarding the origination of, a call." The Commission proposes to define "information regarding the origination" to mean any: (i) Telephone number; (ii) portion of a telephone number, such as an area code; (iii) name; (iv) location information; or (v)

other information regarding the source or apparent source of a telephone call. The Commission seeks comment on this proposed definition. Are there other things that should be included in the definition? For example, should the definition explicitly reference information transmitted in the SS7 Jurisdiction Information Parameter (JIP) code that provides information about the location of a caller who has ported his number or is calling over a mobile service? Does the proposed definition provide sufficient clarity about what is included?

11. The Act is directed at "any person," but does not define the term "person." In order to make clear that the rules are not limited to natural persons and to be consistent with the Commission's current rules concerning the delivery of CPN, the proposed amendments to the CPN rules use the phrase any "person or entity." By contrast, the proposed amendments to the Commission's forfeiture rules use the term "person" in order to be consistent with the use of the term "person" in the forfeiture rules. In both cases, the Commission intends for the entities covered to be those that are considered to be a "person" under the definition of "person" in the Communications Act. The Commission seeks comment on this approach. Should the Commission, consistent with its stated intent, incorporate the Communications Act definition of person in both rules rather than use different terminology in each rule? The Commission also seeks comment on whether it should exclude any class of persons or entities from the definition of "person" and if so, whom it should exclude. Should the same rules apply to individuals and businesses? The Commission also seeks comment on whether there are other terms that should be defined in the Commission's implementing regulations.

12. *Third-Party Spoofing Services.* There are numerous third-party providers of caller ID spoofing services, which can make it easy for callers to engage in caller ID spoofing. Third-party spoofing services can facilitate lawful and legitimate instances of caller ID manipulation as well as unlawful and illegitimate caller ID manipulation. DOJ has urged the Commission to consider adopting rules requiring "public providers of caller ID spoofing services to make a good-faith effort to verify that a user has the authority to use the substituted number, such as by placing a one-time verification call to that number." The Commission invites comment on whether the Commission can, and should, adopt rules imposing obligations on providers of caller ID spoofing services when they are not themselves acting with intent to defraud, cause harm, or wrongfully obtain anything of value. For example, are there reporting or record-keeping requirements that we can and should impose on third-party spoofing services that would assist the Commission in preventing callers from knowingly spoofing caller identification information with intent to defraud, cause harm, or wrongfully obtain anything of value or that would assist the Commission in identifying callers who engage in such practices? The Commission also seeks comment on DOJ's specific proposal relating to providers of caller ID spoofing services, and more broadly on what rules we can adopt to discourage or prevent caller ID spoofing services from enabling or facilitating unlawful conduct. If a third-party provider knows or has reason to believe that a caller is seeking to use the caller ID spoofing service for impermissible purposes, should the third party be held liable, or have a duty to report its concerns to the Commission? What jurisdiction does the Commission have to impose obligations on third-party providers? How would DOJ's proposal, or other possible approaches to address third-party services that may facilitate unlawful activity, affect the callers that use third-party services for permissible purposes?

13. *Exemptions.* The Act directs the Commission to exempt from its regulations: (i) any authorized activity of a law enforcement agency; and (ii) court orders that specifically authorize the use of caller identification manipulation. The Act also makes clear that it "does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State or a political subdivision of a State, or of an intelligence agency of the United States." The proposed rules therefore incorporate the two exemptions specified in the Act, and expand the exemption for law enforcement activities to cover protective and intelligence activities. The Commission seeks comment on this proposal.

14. The Act gives the Commission authority to adopt additional exemptions to the prohibition on using caller ID spoofing as the Commission determines appropriate. Therefore, the Commission also seeks comment on whether it should adopt any additional exemptions. Do carriers or interconnected VoIP providers engage in legitimate conduct that could be implicated by the proposed rules? For example, in many instances, the carrier or provider merely transmits the caller ID information it receives from another carrier, provider, or customer. Should the Commission expressly exempt carrier or provider conduct under these circumstances, even if the information conveyed is not accurate? Should the Commission more generally exempt conduct by carriers or interconnected VoIP providers that is necessary to provide services to their customers? The Act exempts authorized activity of law enforcement agencies and court orders that specifically authorize the use of caller identification manipulation. Should the proposed rules also exempt conduct by carriers or interconnected VoIP providers that is authorized or required by law? Are any such exemptions for carriers and interconnected VoIP providers necessary, given the Act's requirement that a violation involve intent to defraud, cause harm, or wrongfully obtain anything of value?

15. Some caller identification manipulation services allow customers to select which caller identification information is displayed. Likewise, certain services—such as pick-your-own-area-code—enable customers to select phone numbers that are not geographically associated with their location, and thus are potentially misleading with respect to the "origination of" calls by such persons. Does the Commission need to adopt an exemption to avoid stifling innovative new services such as call back services or services that involve manipulation of area codes, or location?

16. *Caller ID Blocking.* The Truth in Caller ID Act specifies that it is not intended to be construed to prevent or restrict any person from blocking the transmission of caller identification information. The legislative history shows that Congress intended to protect subscribers' ability to block the transmission of their own caller identification information to called parties. Therefore, the proposed rules provide that a person or entity that blocks or seeks to block a caller identification service from transmitting or displaying that person or entity's own caller identification information shall not be liable for violating the Commission's Truth in Caller ID Act implementing rules. The Commission seeks comment on whether the proposed rules appropriately implement this provision of the Act.

17. Although the Commission's rules generally allow callers to block caller ID, telemarketers are not allowed to do so. Telemarketers are required to transmit caller identification

information, and the phone number they transmit must be one that a person can call to request placement on a company-specific do-not-call list. This requirement benefits consumers and law enforcement. It allows consumers to more easily identify incoming telemarketing calls and to make informed decisions about whether to answer particular calls. It also facilitates consumers' ability to request placement on company-specific do-not-call lists. The requirement also assists law enforcement investigations into telemarketing complaints. Therefore, the proposed rules specify that any person or entity that engages in telemarketing, as defined in § 64.1200(f)(10) of the Commission's rules, remains obligated to transmit caller identification information under § 64.1601(e) of the Commission's rules. The Commission seeks comment on this provision of the proposed rules.

18. Some entities—often the same ones that offer spoofing services—also offer the ability to unmask a blocked number, effectively stripping out the privacy indicator chosen by the calling party. Are there ways that carriers and interconnected VoIP providers can prevent third parties from overriding calling parties' privacy choice? If so, would it be appropriate for the Commission to impose such obligations? What legal authority does the Commission have to address this practice? Commenters that support amending the Commission's rules should identify specific rule changes that will prevent these practices while ensuring that consumers' privacy preferences are respected.

19. Finally, we seek comment on the benefits and burdens, including the burdens on small entities, of adopting the proposed rules implementing the provisions of the Truth in Caller ID Act. Are there any other considerations the Commission should take into account as it evaluates rules to implement the Act?

B. Enforcement Issues

20. The Truth in Caller ID Act provides for additional forfeiture penalties for violations of section 227(e) of the Communications Act, and new procedures for imposing and recovering such penalties. In order to implement the forfeiture provisions of the Truth in Caller ID Act, we propose modifications to the Commission's forfeiture rules. We seek comment on the proposed amendments to our forfeiture rules and on some additional issues relating to enforcement of the Truth in Caller ID Act.

21. *Amount of Penalties.* The Act specifies that the penalty for a violation of the Act "shall not exceed $10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act." These forfeitures are in addition to penalties provided for elsewhere in the Communications Act. Thus the Truth in Caller ID Act establishes the maximum amount of additional forfeiture the Commission can assess for a violation of the Act, but it does not specify how the Commission should determine the forfeiture amount in any particular situation. Therefore, the Commission proposes to amend § 1.80(b) of our rules to include a provision specifying the maximum amount of the additional fines that can be assessed for violations of the Truth in Caller ID Act. The Commission also proposes to employ the balancing factors we typically use to inform the amount of a forfeiture, which are set forth in section 503(b)(2)(E) of the Communications Act and § 1.80(b)(4) of the Commission's rules. The balancing factors include "the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." The Commission seeks comment on these proposals.

22. *Procedure for Determining Penalties.* With respect to the procedure for determining or imposing a penalty, the Act provides that "[a]ny person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b) [of the Communications Act], to have violated this subsection shall be liable to the United States for a forfeiture penalty." It also states that "[n]o forfeiture penalty shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) or section 503(b)(4) [of the Communications Act]." Taken together, sections 503(b)(3) and 503(b)(4) allow the Commission to impose a forfeiture penalty against a person through either a hearing or a written notice of apparent liability (NAL), subject to certain procedures. The Truth in Caller ID Act makes no reference to section 503(b)(5) of the Communications Act, which states that the Commission may not assess a forfeiture under any provision of section 503(b) against any person, who: (i) "does not hold a license, permit, certificate, or other authorization issued by the Commission;" (ii) "is not an applicant for a license, permit, certificate, or other authorization issued by the Commission;" or (iii) is not "engaging in activities for which a license, permit, certificate, or other authorization is required," unless the Commission first issues a citation to such person in accordance with certain procedures. That omission suggests that Congress intended to give the Commission the authority to proceed expeditiously to stop and, where appropriate, assess a forfeiture against, unlawful caller ID spoofing by any person or entity engaged in that practice without first issuing a citation. Therefore, the proposed rules would allow the Commission to determine or impose a forfeiture penalty for a violation of section 227(e) against "any person," regardless of whether that person holds a license, permit, certificate, or other authorization issued by the Commission; is an applicant for any of the identified instrumentalities; or is engaged in activities for which one of the instrumentalities is required. The proposed rules clarify that the citation-first requirements in the Commission's rules do not apply to penalties imposed for violations of the Truth in Caller ID Act. The Commission invites comment on this interpretation of the relationship between the Truth in Caller ID Act and section 503(b)(5) of the Communications Act.

23. In contrast to section 503(b)(1)(B) of the Communications Act, which provides for a forfeiture penalty against anyone who has "willfully or repeatedly" failed to comply with any provisions of the Communications Act, or any regulations issued by the Commission under the Act, the Truth in Caller ID Act does not require "willful" or "repeated" violations to justify imposition of a penalty. Therefore, the Commission proposes to amend § 1.80(a) of the Commission's rules to add a new paragraph (a)(4) providing that forfeiture penalties may be assessed against any person found to have "violated any provision of section 227(e) or of the rules issued by the Commission under that section of the Act." The Commission seeks comment on that proposal.

24. *Statute of Limitations.* The Truth in Caller ID Act specifies that "[n]o forfeiture penalty shall be determined or imposed against any person under [section 227(e)(5)(i)] if the violation charged occurred more than 2 years prior to the date of issuance of the required notice or notice of apparent liability." This statute differs from the one in section 403(b)(6) of the Communications Act, which provides for a one-year statute of limitations. The Commission proposes to adopt a two-year statute of limitations for taking

action on violations of the Truth in Caller ID Act. The Commission seeks comment on this proposal.

25. *Miscellaneous.* The Commission also takes this opportunity to propose redesignating as "Note to paragraph 1.80(a)" the undesignated text in section 1.80(a) and revising the new "Note to paragraph 1.80(a)" to address issues not directly relating to implementation of the Truth in Caller ID Act. First, in order to ensure that the language in the rule encompasses the language used in all of the statutory provisions, the Commission proposes amending the rule to say that the forfeiture amounts set forth in § 1.80(b) are inapplicable "to conduct which is subject to a forfeiture penalty *or fine*" under the various statutory provisions listed. (Emphasis added.) Second, the Commission proposes changing the references to sections 362(a) and 362(b) to sections 364(a) and 364(b) in order that the statutory provision references match those used in the Communications Act, rather than the U.S. Code. (Section 364 of the Communications Act is codified as 47 U.S.C. 362.) Third, the Commission proposes deleting section 503(b) from the list of statutory provisions to which the forfeiture amounts in § 1.80(b) do not apply, because the inclusion was error; § 1.80(b) implements the forfeiture amounts of section 503(b), and so the penalties set forth in § 1.80(b) apply to forfeiture under section 503(b). The Commission seeks comment on these proposed changes to its forfeiture rules.

C. Report

26. The Truth in Caller ID Act requires the Commission to issue a report to Congress within six months of the law's enactment on "whether additional legislation is necessary to prohibit the provisions of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications services or IP-enabled voice services." The Commission seeks comment on which technologies parties anticipate will be successor or replacement technologies to telecommunications services or IP-enabled voice services. The Commission also seeks comment on the provision of inaccurate caller ID information with respect to such technologies, and whether the Commission will need additional authority to address concerns about caller ID spoofing associated with such successor or replacement technologies. In particular, the Commission seeks comment on communications services that are not interconnected with the public switched telephone network. In addition, the Commission seeks comment on whether there are other issues that the Commission should include in its report to Congress.

Procedural Matters

A. Paperwork Reduction Act Analysis

27. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this notice of proposed rulemaking. 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 further notice of proposed rulemaking. The Commission will send a copy of the notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the SBA.

C. Ex Parte Presentations

29. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to section 2 of the Truth in Caller ID Act of 2009, Pub. Law 11–331, and sections 1, 4(i), 4(j), 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 227 and 303(r) this Notice, with all attachments, *is adopted.*

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in this NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

2. The Truth in Caller ID Act of 2009 (Truth in Caller ID Act, or Act) was enacted on December 22, 2010. The Act prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The Truth in Caller ID Act requires the Commission to issue implementing regulations within six months of the law's enactment. It also requires the Commission, by the same date, to submit a report to Congress on "whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications services or IP-enabled voice services." The NPRM proposes to (i) add a new section and new definitions to the Commission's current rules governing Calling Party Number (CPN) services, 47 CFR 64.1600 *et seq.,* and (ii) enhance the Commission's forfeiture rules, 47 CFR 1.80.

3. The proposed additions to the Commission's CPN rules are modeled on the Act's prohibition against engaging in caller ID spoofing with fraudulent or harmful intent. The proposed rules would prohibit any person or entity in the United States, with the intent to defraud, cause harm, or wrongfully obtain anything of value, from knowingly causing, directly or indirectly, any caller identification

service to transmit or display misleading or inaccurate caller identification information. The Act directs the Commission to exempt from its regulations: (i) any authorized activity of a law enforcement agency; and (ii) court orders that specifically authorize the use of caller identification manipulation. The Act also makes clear that it "does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State or a political subdivision of a State, or of an intelligence agency of the United States." The proposed rules therefore incorporate the two exemptions specified in the Act, and expand the exemption for law enforcement activities to cover protective and intelligence activities.

4. The proposed amendments to the Commission's forfeiture rules are intended to implement the penalties and procedures for imposing penalties provided for in the Act. The Act specifies that the penalty for a violation of the Act "shall not exceed $10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act." These forfeitures are in addition to penalties provided for elsewhere in the Communications Act. Therefore, the proposed amendments to § 1.80(b) of the Commission's rules include a provision specifying the maximum amount of the additional fines that can be assessed for violations of the Truth in Caller ID Act. Also, consistent with the specifications of the Act, the proposed rules would allow the Commission to determine or impose a forfeiture penalty for a violation of section 227(e) against "any person," regardless of whether that person holds a license, permit, certificate, or other authorization issued by the Commission; is an applicant for any of the identified instrumentalities; or is engaged in activities for which one of the instrumentalities is required.

5. The proposed rules do not impose recording keeping or reporting obligations on any entity. The NPRM does, however, seek comment on whether the Commission can and should adopt rules imposing obligations on providers of caller ID spoofing services. The NPRM also seeks comment on whether there are ways that carriers and interconnected VoIP providers can prevent third parties from unmasking a blocked number and overriding calling parties' privacy choice.

B. Legal Basis

6. The proposed action is authorized under the Truth in Caller ID Act, Pub. Law 111–331, codified at 47 U.S.C. 227(e), and sections 1, 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), and 303.

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

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business" and "small organization." 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.

8. Small Business. Nationwide as of 2009, there are approximately 27.5 million small businesses, according to the SBA.

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

10. The Small Businesses and Small Organizations that will be directly affected by the proposed rules are those that knowingly spoof caller ID with the intent to defraud, cause harm, or wrongfully obtain anything of value. We are not aware of any attempts to quantify the number of small businesses or organizations engaged in such practices, nor have we have identified a feasible way to quantify the number of such entities.

11. In addition to entities that spoof their caller identification information, there are entities that provide caller ID spoofing services—services that make it possible for callers to alter or modify the caller identification information that is displayed to call recipients by their caller ID services. We have not proposed rules that directly affect providers of caller ID spoofing services, however, the NPRM requests comment on whether the Commission can and should adopt rules imposing obligations on providers of caller ID spoofing services. We are not aware of any attempts to quantify the number of caller ID spoofing services and we have not identified a feasible way to quantify the number of such entities.

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

12. The proposed rules prohibit any person or entity acting with the intent to defraud, cause harm, or wrongfully obtain anything of value from knowingly causing a caller ID service to alter or manipulate caller ID information. That prohibition does not distinguish between large businesses and entities, small businesses and entities, or individuals. The NPRM does not propose rules that include any reporting or record keeping requirements. However, the NPRM does invite comment on whether the Commission can and should adopt rules imposing obligations, including record keeping and reporting obligations, on providers of caller ID spoofing services when they are not themselves acting with intent to defraud, cause harm, or wrongfully obtain anything of value. Certain providers of caller ID spoofing services may be considered small businesses or small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The Truth in Caller ID Act, which prohibits anyone in the United States from causing any caller identification service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, does not distinguish between small entities and other entities and individuals. The Commission has sought comment on the benefits and economically adverse burdens, including the burdens on small entities, of adopting the proposed rules implementing the provisions of the Truth in Caller ID Act. In addition the Commission seeks comment, focused on the issue of reducing economically adverse impact of the proposed rules on small entities, on alternatives to any proposed rule, or of alternative ways of implementing any proposed rule.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

14. None.

List of Subjects

47 CFR Part 1

Penalties.

47 CFR Part 64

Communications common carriers, Caller identification information, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1, of Title 47 of the Code of Federal Regulation is revised to read as follows:

Authority: 15 U.S.C. 79 *et seq;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

§ 1.80 [Amended]

2. Amend section 1.80 as follows:

a. Designate the undesignated paragraph following (a)(4) as "Note to Paragraph (a)" and revise it;

b. Redesignate paragraphs (a)(4), (b)(3), (b)(4), (b)(5), and (c)(3), as paragraphs (a)(5), (b)(4); (b)(5), (b)(6), and (c)(4), respectively;

c. Redesignate "Note to Paragraph (b)(4)" as "Note to paragraph (b)(5)";

d. Add new paragraphs (a)(4), (b)(3), and (c)(3);

e. Revise redesignated paragraph (b)(4); and

f. Revise paragraph (d).

§ 1.80 Forfeiture proceedings.

(a) * * *

(4) Violated any provision of section 227(e) of the Communications Act or of the rules issued by the Commission under section 227(e) of the Act; or

Note to pararaph (a): A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2), (b)(3), (b)(4) of this section shall not apply to conduct which is subject to a forfeiture penalty or fine under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 364(a), 364(b), 386(a), 386(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

* * * * *

(b) * * *

(3) Any person determined to have violated section 227(e) of the Communications Act or of the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than $10,000 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(4) In any case not covered by paragraphs (b)(1), (b)(2) or (b)(3) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $112,500 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

(c) * * *

(3) In the case of a forfeiture imposed under section 227(e), no forfeiture will be imposed if the violation occurred more than 2 years prior to the date on which the appropriate notice is issued.

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under subsection 227(e)(5) of the Act, no forfeiture penalty shall be imposed upon any person under this section of the Act if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

(1) Is sent a citation reciting the violation charged;

(2) Is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and

(3) Subsequently engages in conduct of the type described in the citation.

However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Paragraph (c) of this section does not limit the issuance of citations. When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the citation without issuance of an additional citation.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k), 227; secs. 403(b)(2)(B), (c), Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, and 254(k) unless otherwise noted.

4. Section 64.1600 is amended by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (e), (f), (i) and (j) respectively and by adding new paragraphs (c), (d), (g), and (h) to read as follows:

§ 64.1600 Definitions.

* * * * *

(c) *Caller identification information.* The term "Caller identification information" means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VoIP service.

(d) *Caller identification service.* The term "Caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VoIP service. Such term includes automatic number identification services.

* * * * *

(g) *Information regarding the origination.* The term "Information regarding the origination" means any:

(1) Telephone number;

(2) Portion of a telephone number, such as an area code;

(3) Name;

(4) Location information; or

(5) Other information regarding the source or apparent source of a telephone call

(h) *Interconnected VoIP service.* The term "Interconnected VoIP service" has the same meaning given the term "Interconnected VoIP service" in 47 CFR 9.3 as it currently exists or may hereafter be amended.

§ 64.1604 [Redesignated as § 64.1605]

5. Section 64.1604 is redesignated as § 64.1605, and a new section 64.1604 is added to read as follows:

§ 64.1604 Prohibition on transmission of inaccurate or misleading caller identification information.

(a) No person or entity in the United States, shall, with the intent to defraud, cause harm, or wrongfully obtain anything of value, knowingly cause, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information.

(b) *Exemptions.* Paragraph (a) of this section shall not apply to:

(1) Lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States; or

(2) Activity engaged in pursuant to a court order that specifically authorizes the use of caller identification manipulation.

(c) A person or entity that blocks or seeks to block a caller identification service from transmitting or displaying that person or entity's own caller identification information shall not be liable for violating the prohibition in paragraph (a) of this section. This subsection does not relieve any person or entity that engages in telemarketing, as defined in § 64.1200(f)(10) of the obligation to transmit caller identification information under § 64.1601(e).

[FR Doc. 2011–6877 Filed 3–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 09–209; Report No. 2926]

Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding listed in this document (Amendment of the Amateur Service Rules Governing Vanity and Club Station Call Signs). In the Rulemaking proceeding, the Commission amended the rules governing amateur radio service vanity and club station call signs to, among other things, limit club stations to holding one vanity call sign and limit individuals to serving as the trustee for one club. ARRL, the national association for Amateur Radio, formerly known as the American Radio Relay League, Inc. (ARRL), filed a Petition for Reconsideration arguing that the rule amendments adopted by the Commission are capable of being evaded, and thus do not fully effectuate the Commission's intent of preventing individuals from using club station licenses to hoard vanity call signs. ARRL proposes alternate regulatory language that it believes would better prevent hoarding of vanity call signs.

DATES: Oppositions to the Petitions must be filed by April 7, 2011. Replies to an opposition must be filed April 18, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FUTHER INFORMATION CONTACT: Scot Stone, Wireless Competition Bureau, 202–418–0638.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2926, released February 15, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

This document published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Subject: In the Matter of Amendment of the Amateur Service Rules Governing Vanity and Club Station Call Signs (WT Docket No. 09–209); Petition for Rule Making: Amateur Radio Service (Part 97); Petition to change Part 97.19(c)(2) of the Amateur Radio Service Rules.

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–5523 Filed 3–22–11; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 76, No. 56

Wednesday, March 23, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Landmark Earth Solutions, Inc., a subsidiary of Leggett & Platt, Inc. of Carthage, Missouri, an exclusive license to U.S. Patent No. 6,383,548, "COBY PRODUCTS AND A PROCESS FOR THEIR MANUFACTURE," issued on May 7, 2002.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Landmark Earth Solutions, Inc., a subsidiary of Leggett & Platt, Inc. of Carthage, Missouri, has submitted a complete and sufficient application for a license. 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 thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which 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.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–6895 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Nutrition Assistance in Farmers' Markets: Understanding Current Operations

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for the Food and Nutrition Service to examine how nutrition assistance programs are currently being implemented in the diverse operational contexts of farmers' markets and identify facilitators and barriers for farmers' markets' participation in the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be received on or before May 23, 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 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 that were used; and (c) ways to enhance the quality, utility, and clarity of the information to be collected.

Comments may be sent to: Steven Carlson, Office of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

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 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: Nutrition Assistance in Farmers Markets: Understanding Current Operations.

OMB Number: 0584–NEW.

Expiration Date of Approval: Not yet determined.

Type of Request: New collection.

Abstract: The USDA, Food and Nutrition Service (FNS), is pursuing several initiatives to improve access to healthy foods among the general public and nutrition assistance program participants. Among these are steps to support the availability of farmers' markets and direct access to farm products. FNS' overall objective is to promote direct-to-consumer agriculture through farmers' markets and provide more opportunities for nutrition assistance program participants to take advantage of this source of fresh produce. In order to meet this objective, FNS needs to understand how the federal nutrition assistance programs operate in the diverse settings represented by farmers' markets and the factors that influence farmers' markets to participate in nutrition assistance programs. To this end, FNS is conducting a survey with a representative sample of farmers' markets from four strata that are of particular interest to FNS:

1. SNAP authorized farmers' markets that redeemed benefits during the 2010 season;

2. SNAP authorized farmers' markets that did not redeem benefits during the 2010 season;

3. Farmers' markets SNAP-authorized for one or more of the 2006 to 2009 seasons, but not authorized in 2010; and

4. Farmers' markets that have never been authorized to redeem SNAP benefits.

The data collection activities to be undertaken subject to this notice include:

• The survey will be administered to farmers' market managers represented in the four categories of farmers markets above. Data collection will occur either by mail, web or phone depending on the preference of the market manager.

• To supplement the survey data, four focus groups will be conducted with SNAP recipients to provide consumer perspectives on farmers' market operations. Two groups will be conducted with recipients that are current farmers' market shoppers, and two groups will be conducted with recipients that are not farmers' market shoppers.

Affected Public: Respondent groups identified include: (1) Business-for-profit (Farmers' Market Managers) and (2) Individuals/Households (SNAP recipients).

Estimated Number of Respondents: The total estimated number of respondents is 2636. This includes 2544 Farmers' Market Managers (80% who will complete interviews); 92 SNAP recipients (32 will participate in the focus group discussions).

Estimated Number of Responses per Respondent: Farmers' market managers will complete the survey one time. SNAP recipients will complete the focus group once.

Estimated Total Annual Responses: 2636.

Estimated time per Response: Farmers' market managers working in SNAP-authorized farmers' markets in 2010 or previously SNAP-authorized farmers' markets will take approximately 25 minutes (0.4167 hours) to complete the survey. Farmers' market managers working in never SNAP-authorized farmers' markets will take approximately 20 minutes (0.3333 hours) to complete the survey. Each SNAP recipient will participate in the focus group discussion for approximately 2 hours.

Estimated Total Annual Burden on Respondents: 829 hours.

Respondent	Estimated annualized burden hours				
	Number of respondents	Number of responses per respondent	Estimated total annual responses	Average burden per response (in hours)	Total burden (in hours)
Farmers' Market Manager Survey					
SNAP FMs-with benefits redeemed in 2010:					
Completed	567	1	567	.4167	236.27
Attempted	142	1	142	.0167	2.37
SNAP FMs-without benefits redeemed in 2010:					
Completed	319	1	319	.4167	132.93
Attempted	79	1	79	.0167	1.32
SNAP-authorized FMs previously not in 2010:					
Completed	299	1	299	.3333	99.66
Attempted	75	1	75	.0167	1.25
Never SNAP-authorized FMs:					
Completed	851	1	851	.3333	283.64
Attempted	212	1	212	.0167	3.54
Survey Total	2544		2544		760.98
Focus Groups with SNAP Recipients					
Recruitment Screener:					
Completed	40	1	40	.0835	3.34
Attempted	20	1	20	.0334	0.67
Focus Group discussion:					
Completed	32	1	32	2	64
Attempted	0	1	0		
Focus Group Total	92		92		68
TOTAL	2636				828.98

Dated: March 18, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–6896 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest Resource Advisory Committee will meet in Walker, Minnesota. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the first meeting is to review and discuss a portion of the submitted project proposals, specifically those addressing road maintenance and watershed improvements. The purpose of the second meeting is to review all remaining submitted project proposals.

DATES: Two meetings will be held; on Wednesday, April 13th, at 9 a.m. and on Thursday, April 28th, at 9 a.m.

ADDRESSES: The meetings will be held at the Chase on the Lake Hotel, Basement Conference Room, 502 Cleveland Boulevard, Walker, MN 56484. Written comments should be sent to Chippewa National Forest RAC, 200 Ash Avenue, NW., Cass Lake, MN 56633. Comments may also be sent via e-mail to *kgetting@fs.fed.us,* or via facsimile to 218–335–8637.

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 Chippewa National Forest Supervisors Office. Visitors are encouraged to call ahead to 218–335–8600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kay K. Getting, Public Affairs Team Leader, Chippewa National Forest Supervisors Office, 218–335–8600. 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 meetings are open to the public. The following business will be conducted at each meeting: Review of previous meeting content, committee housekeeping, review of rules and criteria, recommending which projects discussed will be forwarded for further consideration and a Public Forum. The agenda and any applicable documents may be previewed at the Secure Rural Schools RAC Web site *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.* Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who make written requests by April 1st, 2011 will have the opportunity to address the Comittee at those sessions.

Dated: March 14, 2011.

Darla Lenz,

Chippewa National Forest Supervisor.

[FR Doc. 2011–6521 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet April 15, 2011 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout Discussion (3) Public Comment, (4) Financial Report (5) Sub-committees (6) Matters before the group (7) Discussion—approval of projects, (8) Next agenda and meeting date.

DATES: The meeting will be held on April 15, 2011, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St. Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428, (707) 983–6658; E-mail *windmill@willitsonline.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by April 10, 2011. Public comment will have the opportunity to address the committee at the meeting.

Dated: March 16, 2011.

Lee Johnson,

Designated Federal Official.

[FR Doc. 2011–6815 Filed 3–22–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that briefing and planning meetings of the Vermont Advisory Committee to the Commission will convene at 10:30 a.m. (EST) on Monday, March 28, 2011, at the Vermont State House, 115 State Street, Room 11, Montpelier, VT 05633.

The purpose of the briefing is to discuss criminal justice data collection and analysis procedures. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by April 28, 2011. Written comments may be mailed, e-mailed, or faxed to the Eastern Regional Office (ERO). Persons who desire additional information may make their request by mail, e-mail, phone, or fax. See contact information below.

Records generated from these meetings may be inspected and reproduced at the ERO, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the ERO. See contact information below.

Persons who are deaf or hearing-impaired who will attend the meetings and require the services of a sign language interpreter should contact the ERO at least ten (10) days before the scheduled date of the meeting either by e-mail or TDD relay service. See contact information below.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on March 17, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–6817 Filed 3–22–11; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Mexico Advisory Committee to the Commission will be held at the Albuquerque Hispano Chamber of Commerce, Lockheed Martin Board Room, 1309 Fourth Street, SW., Albuquerque, NM 87102 and will convene at 2 p.m. on Tuesday, March 31, 2011. The purpose of the meeting is for the committee to discuss recent Commission and regional activities, discuss current civil rights issues in the state and plan future activities. The Committee will also be briefed by a representative yet to be determined.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by April 31, 2011. The address is Rocky Mountain Regional Office, 999—18th Street, Suite 1380S, Denver, CO 80202. Comments may be e-mailed to *ebohor@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

Deaf or hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 17, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–6818 Filed 3–22–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 22–2011]

Foreign-Trade Zone 177—Evansville, IN; Application for Manufacturing Authority, Best Chair, Inc. d/b/a Best Home Furnishings, (Upholstered Furniture), Ferdinand, Cannelton, and Paoli, IN

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Ports of Indiana, grantee of FTZ 177, requesting manufacturing authority on behalf of Best Chair, Inc. d/b/a Best Home Furnishings (Best Home), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 177. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 17, 2011.

The Best Home facilities (815 employees) will be located within the FTZ 177 service area at three planned sites: Site 5—at 1 Best Drive in Ferdinand (Dubois County), Indiana; Site 6—at 4502 East State Road 66, Cannelton (Perry County), Indiana; and, Site 7—at 1700 West Willow Creek Road, Paoli (Orange County), Indiana (Orange County to be included within expanded ASF service area, as proposed — Doc. 3–2011, 76 FR 1133, 1–7–2011). The facilities are used to produce upholstered furniture (up to 1.5 million sofas, sectionals, loveseats, chairs, and recliners annually) and cut-and-sewn upholstery covers for the U.S. market and export. The application proposes that Best Home utilize foreign-origin "micro-denier suede" fabric to be cut and sewn into furniture upholstery covers under FTZ procedures. The finished upholstery covers (HTSUS 9401.90; duty free) would then be assembled into finished sofas, sectionals, loveseats, chairs, and recliners manufactured by Best Home at its Indiana facilities.

The proposed scope of authority under FTZ procedures would only involve duty savings on foreign-origin, micro-denier suede fabrics (classified under HTSUS Headings 5407, 5512, 5515, 5516, 5903, 5906, 6001, 6005, 6006; duty rate range: 2.7–17.2%) finished with a caustic soda wash process, which the applicant indicates are not produced by U.S. mills. The application indicates that Best Home does not seek FTZ benefits on any of the other foreign fabrics the company uses in production at the facilities (*i.e.,* full duties would be paid on all such fabrics). All other material inputs used in the proposed manufacturing activity would be domestic status.

FTZ procedures would exempt Best Home from customs duty payments on the foreign micro-denier suede fabric used in export production. On micro-denier suede fabric used in production for the U.S. market, the company could elect the finished upholstery cover (*i.e.,* furniture part) duty rate (free) after the fabric has been cut, sewn, and formed into upholstery covers, at which time they are entered for consumption from the zone. Best Home would also have the option to elect the finished furniture duty rate (free) for the subject fabric when the finished furniture is entered for domestic consumption. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre V. Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for receipt of comments is May 23, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 6, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Pierre V. Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: March 17, 2011.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 2011–6882 Filed 3–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 15, 2010, the Department of Commerce ("Department") published the *Preliminary Results* of the first administrative review of the antidumping duty order on certain steel nails ("steel nails") from the People's Republic of China ("PRC").[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results of this review. The final weighted-average margins are listed below in the "Final Results of the Review" section of this notice. The

[1] *See Certain Steel Nails From the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review,* 75 FR 56070 (September 15, 2010) ("*Preliminary Results*").

period of review ("POR") is January 23, 2008, through July 31, 2009.

DATES: *Effective Date:* March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0219 or (202) 482–2312, respectively.

Case History

On September 15, 2010, the Department published the *Preliminary Results* of this administrative review. On October 7, 2010, we sent a supplemental questionnaire to separate-rate respondent Yitian Nanjing Hardware Co., Ltd. ("Yitian Nanjing"). On October 12, 2010, one of the individually-reviewed respondents who had received a calculated rate at the *Preliminary Results,* Shandong Minmetal Co., Ltd. ("Shandong Minmetal"), informed the Department that it would not participate in verification and withdrew from the administrative review. On October 20, 2010, we confirmed with counsel for Yitian Nanjing that a response to the Department's supplemental questionnaire was not filed by the stipulated deadline. On October 21, 2010, following the decision in *Dorbest,*[2] the Department placed wage rate data on the record for comment.[3] The Department conducted verification of: (1) Tianjin Jinchi Metal Products Co., Ltd. ("Tianjin Jinchi") on November 12, 2010; (2) Stanley's[4] PRC offices and factory from November 15, 2010, through November 17, 2010; (3) a wire-drawing subcontractor for Stanley from November 18, 2010, through November 19, 2010; and (4) Stanley's U.S. office from December 14, 2010, through December 16, 2010. We invited interested parties to comment on the *Preliminary Results.* Between November 3, 2010, and January 25, 2011, we received case and rebuttal briefs from Petitioner,[5] one individually-reviewed respondent, Stanley, and other interested parties[6] in this administrative review.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the "Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review," dated concurrently with this notice ("I&D Memo"), which is hereby adopted by this notice. A list of the issues which parties raised, and to which we responded in the I&D Memo, is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Final Partial Rescission of Administrative Review

In the *Preliminary Results,* the Department announced its intent to rescind the review with respect to certain companies[7] that certified they made no shipments of subject merchandise during the POR.[8] For the final results, we continue to find that these companies did not make shipments during the POR. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,[9] we are rescinding this review with respect to these companies.

Changes Since the Preliminary Results

Based on a review of the record, verification, as well as comments received from parties regarding our *Preliminary Results*, we have made certain changes to the margin calculations. Specifically, we have updated the calculation for labor and several surrogate values used in the *Preliminary Results.*[10] We also revised our labor wage rate methodology. *See* the "Wage Rate Methodology" section below. For all changes to the calculations, *see* the I&D Memo and company-specific analysis memoranda. For changes to the surrogate values, *see* "Memorandum to the File, through Alex Villanueva, Program Manager, AC/CVD Operations, Office 9, from Emeka Chukwudebe, case analyst, AD/CVD Operations, Office 9, First Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Results," dated concurrently with this notice.

Scope of the Order

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails

[2] *See Dorbest Ltd.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010) ("*Dorbest*").

[3] *See* Memorandum to the file through James C. Doyle, Office 9 Director, and Alex Villanueva, Office 9 Program Manager, from Emeka Chukwudebe, Office 9 Case Analyst, dated October 21, 2010, First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China ("PRC"): Industry-Specific Wage Rate Selection ("Wage Rate Memo").

[4] The Stanley Works (Langfang) Fastening Systems Co., Ltd. ("Stanley Langfang"), the Stanley Works/Stanley Fastening Systems LP ("Stanley Works"), and an unaffiliated wire drawing subcontractor are collectively referred to as "Stanley" in this administrative review.

[5] Mid Continent Nail Corporation.

[6] The following companies filed combined case briefs: Itochu Building Products Co., Inc.; Chiieh Yung Metal Ind. Corp. ("Chiieh Yung"); Certified Products International Inc. ("CPI"); Huanghua Jinhai Hardware Products Co., Ltd.; Tianjin Jinghai County Hongli Industry & Business Co., Ltd.; Tianjin Jinchi; Shandong Dinglong Import & Export Co., Ltd.; Tianjin Zhonglian Metals Ware Co., Ltd.; Beijing Daruixing Nail Products Co., Ltd.; Hengshui Mingyao Hardware & Mesh Products Huanghua Xionghua Hardware Products Co., Ltd; Wintime Import & Export Corporation Limited of Zhongshan; Shanghai Jade Shuttle Hardware Tools Co., Ltd.; Romp (Tianjin) Hardware Co., Ltd.; China Staple Enterprise (Tianjin) Co., Ltd.; Tianjin Jurun Metal Products Co., Ltd. ("Tianjin Jurun"); Wuhu Shijie Hardware Co., Ltd. ("Wuhu Shijie"); Yitian Nanjing; Shanghai Chengkai Hardware Products Co., Ltd.; Tianjin Port Free Trade Zone Xiangtong International Industry & Trade Corp.; Tianjin Longxing (Group) Huanyu IMP. & EXP. Co., Ltd.; Dagang Zhitong Metal Products Co., Ltd.; Tianjin Shenyuan Steel Producting Group Co., Ltd.; Hebei Super Star Pneumatic Nails Co., Ltd.; Shaoxing Chengye Metal Producting Group Co., Ltd.; Tianjin Chentai International Trading Co., Ltd.; Qidong Liang Chyuan Metal Industry Co., Ltd.; CYM (Nanjing) Ningquan Nail Manufacture Co., Ltd., a.k.a. CYM (Nanjing) Nail Manufacture Co., Ltd.; and Shanghai Yueda Nails Industry Co., Ltd. a.k.a. Shanghai Yueda Nails Co., Ltd. (collectively, "Itochu *et al.*"); Shanghai Tengyu Hardware Tools Co., Ltd. and Shanghai Curvet Hardware Products Co. Ltd. (collectively, "Tengyu and Curvet"); Nanjing Yuechang Hardware Co., Ltd. ("Nanjing Yuechang"); and Shandong Oriental Cherry Hardware Group Co., Ltd., Shandong Oriental Cherry Hardware Import and Export Co., Ltd., and Jining Huarong Hardware Products Co., Ltd. (collectively, "Oriental Cherry Group").

[7] Those companies are: Besco Machinery Industry (Zhejiang) Co., Ltd.; CPI; CYM (Nanjing) Nail Manufacture Co., Ltd.; Dagang Zhitong Metal Products Co., Ltd.; Hebei Super Star Pneumatic Nails Co., Ltd.; Hong Kong Yu Xi Co., Ltd.; Senco-Xingya Metal Products (Taicang) Co., Ltd.; Shanghai Chengkai Hardware Product Co., Ltd.; Shanghai March Import & Export Company Ltd.; Shaoxing Chengye Metal Producting Co., Ltd.; Suzhou Yaotian Metal Products Co., Ltd.; Tianjin Chentai International Trading Co., Ltd.; Tianjin Jurun; Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.; Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp.; Tianjin Shenyuan Steel Producting Group Co., Ltd.; Wuhu Shijie; and Wuxi Chengye Metal Products Co., Ltd.

[8] *See Preliminary Results,* 75 FR at 56071–56072; *see also* Memorandum to James C. Doyle, Office 9 Director, through Alex Villanueva, Office 9 Program Manager, from Matthew Renkey, Senior Case Analyst and Emeka Chukwudebe, Case Analyst, First Antidumping Duty Administrative Review of Certain Steel Nails From the Peoples' Republic of China ("PRC"): Partial Rescission of the First Antidumping Duty Administrative Review, dated September 7, 2010.

[9] *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008).

[10] *See* I&D Memo at Comment 2 and the company-specific analysis memoranda.

that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country.[11] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, the Department continues to treat the PRC as an NME country for purposes of these final results.

Surrogate Country

In the *Preliminary Results,* the Department stated that it selected India as the appropriate surrogate country to use in this administrative review for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and (3) the Department has reliable data from India that it can use to value the factors of production. As no party submitted additional comments challenging our selection of the primary surrogate country, we are continuing to use India as the surrogate country for the final results of this administrative review.

Wage Rate Methodology

Pursuant to *Dorbest,* we have calculated a revised hourly wage rate to use in valuing Stanley's reported labor. The revised wage rate is calculated by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise, pursuant to section 773 of the Act. *See* I&D Memo at Comment 2.

Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[12]

In the *Preliminary Results,* we determined that in addition to the mandatory respondents, Stanley and Shandong Minmetal, the Separate-Rate Applicants also met the criteria for separate rate status.[13] Since the publication of the *Preliminary Results,* Shandong Minmetal withdrew from the review. Therefore, the Department has, as adverse facts available ("AFA"), treated Shandong Minmetal as part of the PRC-wide entity.[14] Moreover, we note that the information that Shangdong Minmetal provided to the Department to demonstrate the absence of *de facto* and *de jure* control could not be verified due to its failure to cooperate. Consequently we have not granted Shandong Minmetal a separate rate.[15]

The separate rate is determined based on the estimated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on AFA.[16] In this administrative review, one mandatory respondent, Stanley, has an estimated weighted-average antidumping margin which is above *de minimis* and which is not based on total AFA. Therefore, because there is only one relevant weighted-average antidumping margin for these final results, we have assigned

[11] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper From the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[12] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[13] Those companies are: (1) Aironware (Shanghai) Co., Ltd.; (2) Chiieh Yung Metal Ind. Corp.; (3) China Staple Enterprise (Tianjin) Co., Ltd.; (4) Dezhou Hualude Hardware Products Co., Ltd.; (5) Faithful Engineering Products Co., Ltd.; (6) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.; (7) Huanghua Jinhai Hardware Products Co., Ltd.; (8) Huanghua Xionghua Hardware Products Co., Ltd.; (9) Jisco Corporation ("Jisco"); (10) Koram Panagene Co., Ltd. ("Koram Panagene"); (11) Nanjing Yuechang Hardware Co., Ltd.; (12) Qidong Liang Chyuan Metal Industry Co., Ltd.; (13) Qingdao D & L Group Ltd.; (14) Romp (Tianjin) Hardware Co., Ltd.; (15) Shandong Dinglong Import & Export Co., Ltd.; (16) Shanghai Jade Shuttle Hardware Tools Co., Ltd.; (17) Shouguang Meiqing Nail Industry Co., Ltd.; (18) Tianjin Jinchi Metal Products Co., Ltd.; (19) Tianjin Jinghai County Hongli Industry & Business Co., Ltd.; (20) Tianjin Zhonglian Metals Ware Co., Ltd.; (21) Wintime Import & Export Corporation Limited of Zhongshan; and (22) Zhejiang Gem-Chun Hardware Accessory Co., Ltd. (collectively, "Separate-Rate Applicants").

[14] *See* section 735(c)(5)(A) of the Act.

[15] *See* I&D Memo at Comment 13.

[16] *See id.*

Stanley's margin, which is 13.90 percent, to the separate-rate companies.[17]

PRC–Wide Entity

In the *Preliminary Results,* the Department determined that certain PRC exporters subject to this review failed to recertify their separate rates using the separate rate certification provided at the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* to demonstrate their continued eligibility for separate-rate status. Thus, the Department treated these PRC exporters as part of the PRC-wide entity. The Department also found that the PRC-wide entity did not respond to our requests for information.[18] As the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, we continue to treat such entities as part of the PRC-wide entity.

Final Results of the Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted average margin (percent)
(1) Stanley	13.90
(2) Aironware (Shanghai) Co., Ltd	13.90
(3) Chiieh Yung Metal Ind. Corp	13.90
(4) China Staple Enterprise (Tianjin) Co., Ltd	13.90
(5) Dezhou Hualude Hardware Products Co., Ltd	13.90
(6) Faithful Engineering Products Co., Ltd	13.90
(7) Hengshui Mingyao Hardware & Mesh Products Co., Ltd	13.90
(8) Huanghua Jinhai Hardware Products Co., Ltd	13.90
(9) Huanghua Xionghua Hardware Products Co., Ltd	13.90
(10) Jisco Corporation	13.90
(11) Koram Panagene Co., Ltd	13.90
(12) Nanjing Yuechang Hardware Co., Ltd	13.90
(13) Qidong Liang Chyuan Metal Industry Co., Ltd	13.90
(14) Qingdao D & L Group Ltd	13.90
(15) Romp (Tianjin) Hardware Co., Ltd	13.90
(16) Shandong Dinglong Import & Export Co., Ltd	13.90
(17) Shanghai Jade Shuttle Hardware Tools Co., Ltd	13.90
(18) Shouguang Meiqing Nail Industry Co., Ltd	13.90
(19) Tianjin Jinchi Metal Products Co., Ltd	13.90
(20) Tianjin Jinghai County Hongli Industry & Business Co., Ltd	13.90
(21) Tianjin Zhonglian Metals Ware Co., Ltd	13.90
(22) Wintime Import & Export Corporation Limited of Zhongshan	13.90
(23) Zhejiang Gem-Chun Hardware Accessory Co., Ltd	13.90
(24) PRC-wide Entity	118.04

The following companies are not eligible for a separate rate and will be considered part of the PRC-wide entity:

Exporter
(1) Shandong Minmetal.
(2) Beijing Daruixing Global Trading Co., Ltd.
(3) Beijing Tri-Metal Co., Ltd.
(4) Beijing Yonghongsheng Metal Products Co., Ltd.
(5) Cana (Tiajin) Hardware Ind., Co., Ltd.
(6) China Silk Trading & Logistics Co., Ltd.
(7) Chongqing Hybest Nailery Co., Ltd.
(8) Dingzhou Ruili Nail Production Co. Ltd.
(9) Dong'e Fuqiang Metal Products Co., Ltd.
(10) Haixing Hongda Hardware Production Co., Ltd.
(11) Haixing Linhai Hardware Products Factory.
(12) Handuk Industrial Co., Ltd.
(13) Hilti (China) Limited.
(14) Huadu Jin Chuan Manufactory Co., Ltd.
(15) Huanghua Huarong Hardware Products Co., Ltd.
(16) Huanghua Jinhai Metal Products Co., Ltd.
(17) Huanghua Shenghua Hardware Manufactory Factory.
(18) Huanghua Xinda Nail Production Co., Ltd.
(19) Huanghua Yufutai Hardware Products Co., Ltd.
(20) Jinding Metal Products Ltd.
(21) Joto Enterprise Co., Ltd.
(22) Kyung Dong Corp.
(23) Maanshan Longer Nail Product Co., Ltd.
(24) Nanjing Dayu Pneumatic Gun Nails Co., Ltd.
(25) Qingdao Denarius Manufacture Co. Limited
(26) Qingdao International Fastening Systems Inc.
(27) Qingdao Sino-Sun International Trading Company Limited
(28) Qingyuan County Hongyi Hardware Products Factory.
(29) Qingyun Hongyi Hardware Factory.
(30) Rizhao Changxing Nail-Making Co., Ltd.
(31) Rizhao Handuk Fasteners Co., Ltd.
(32) Rizhao Qingdong Electric Appliance Co., Ltd.
(33) Shandong Minimetals Co., Ltd.
(34) Shandong Oriental Cherry Hardware Group, Ltd.
(35) Shanghai Curvet Hardware Products Co., Ltd.
(36) Shanghai Nanhui Jinjun Hardware Factory.
(37) Shanghai Tengyu Hardware Tools Co., Ltd.
(38) Sinochem Tianjin Imp & Exp Shenzhen Corp.
(39) Tianjin Baisheng Metal Products Co., Ltd.
(40) Tianjin Bosai Hardware Tools Co., Ltd.
(41) Tianjin City Dagang Area Jinding Metal Products Factory.
(42) Tianjin City Daman Port Area Jinding Metal Products .Factory
(43) Tianjin City Jinchi Metal Products Co., Ltd.
(44) Tianjin Dagang Dongfu Metallic Products Co., Ltd.
(45) Tianjin Dagang Hewang Nail Factory.
(46) Tianjin Dagang Hewang Nails Manufacture Plant.
(47) Tianjin Dagang Huasheng Nailery Co., Ltd.
(48) Tianjin Dagang Jingang Nail Factory.
(49) Tianjin Dagang Jingang Nails Manufacture Plant.

[17] *See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587, 47591 (August 14, 2008).

[18] *See* I&D Memo at Comment 13.

Exporter
(50) Tianjin Dagang Linda Metallic Products Co., Ltd.
(51) Tianjin Dagang Longhua Metal Products Plant.
(52) Tianjin Dagang Shenda Metal Products Co., Ltd.
(53) Tianjin Dagang Yate Nail Co., Ltd.
(54) Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd.
(55) Tianjin Hewang Nail Making Factory.
(56) Tianjin Huapeng Metal Company.
(57) Tianjin Huachang Metal Products Co., Ltd.
(58) Tianjin Huasheng Nails Production Co., Ltd.
(59) Tianjin Jieli Hengyuan Metallic Products Co., Ltd.
(60) Tianjin Jietong Hardware Products Co., Ltd.
(61) Tianjin Jietong Metal Products Co., Ltd.
(62) Tianjin Jin Gang Metal Products Co., Ltd.
(63) Tianjin Jishili Hardware Co., Ltd.
(64) Tianjin JLHY Metal Products Co., Ltd.
(65) Tianjin Kunxin Hardware Co., Ltd.
(66) Tianjin Kunxin Metal Products Co., Ltd.
(67) Tianjin Linda Metal Company
(68) Tianjin Qichuan Metal Products Co., Ltd.
(69) Tianjin Ruiji Metal Products Co., Ltd.
(70) Tianjin Shishun Metal Product Co., Ltd.
(71) Tianjin Shishun Metallic Products Co., Ltd.
(72) Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd.
(73) Tianjin Xinyuansheng Metal Products Co., Ltd.
(74) Tianjin Yihao Metallic Products Co., Ltd.
(75) Tianjin Yongchang Metal Product Co., Ltd.
(76) Tianjin Yongxu Metal Products Co., Ltd.
(77) Tianjin Yongyi Standard Parts Production Co., Ltd.
(78) Unicatch Industrial Co., Ltd.
(79) Wuqiao County Huifeng Hardware Products Factory.
(80) Wuqiao County Xinchuang Hardware Products Factory.
(81) Wuqiao Huifeng Hardware Production Co., Ltd.
(82) Wuxi Baolin Nail-Making Machinery Co., Ltd.
(83) Wuxi Qiangye Metalwork Production Co., Ltd.
(84) Zhangjiagang Longxiang Packing Materials Co., Ltd.
(85) Zhongshan Junlong Nail Manufactures Co., Ltd.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review, excluding any reported sales that entered during the gap period.[19] Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.* For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 14, 2011.

Kim Glas,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

General Issues

Comment 1: Cash Deposit and Liquidation Instructions
Comment 2: Labor Rate Methodology
Comment 3: Surrogate Financial Ratios
Comment 4: Steel Wire Rod Surrogate Value
Comment 5: Electricity Surrogate Value
Comment 6: Other Surrogate Values
A. Copper Coated Steel Welding Wire
B. Coatings
C. Glass Balls
D. Sodium Hydroxide
E. Sodium Sulfate
F. Plastic Cores
G. Labels
H. Shrink Film
I. Borax
J. Cardboard Trays
Comment 7: Zeroing

Company-Specific Issues

Separate Rate Respondents

Comment 8: Rate for Separate Rate Respondents

CPI

Comment 9: Entries Incorrectly Attributed to CPI

Tengyu and Curvet

Comment 10: Rate for Final Results

Rizhao and Wuxi Qiangye

Comment 11: Rate for Final Results

[19] The gap period represents the period of time after the expiration of the 180-day provisional measures period during the original investigation, to the day prior to the U.S. International Trade Commission's final determination. In the instant case, the gap period is July 22, 2008, to July 24, 2008.

Chiieh Yung, Jisco, and Koram Panagene

Comment 12: Withdrawal of Review Request

Shandong Minmetal

Comment 13: Application of Total Adverse Facts Available ("AFA")

Yitian Nanjing

Comment 14: PRC-wide Rate

Tianjin Shenyuan and Shaoxing Chengye

Comment 15: Correction of Company Names

Oriental Cherry Group

Comment 16: Rate for Final Results

Stanley

Comment 17: Application of Total or Partial AFA

Comment 18: Intermediate Input Methodology

Comment 19: Indirect Selling Expenses

[FR Doc. 2011–6728 Filed 3–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the preliminary results of the new shipper review of certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam"). The period of review for this review is February 1, 2010, through July 31, 2010.

DATES: *Effective Date:* March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0413.

Background

On October 1, 2010, the Department published a notice of initiation of the new shipper review in the antidumping duty order on shrimp from Vietnam for Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. ("Quoc Viet"). *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 75 FR 60730 (October 1, 2010). The preliminary results of this review are currently due no later than March 19, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results within 90 days after the date on which the preliminary results are issued. However, the Department may extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Preliminary Results of Review

The Department has determined that the review is extraordinarily complicated as the Department must issue, and analyze the responses to, additional supplemental questionnaires concerning Quoc Viet's sales practices and its shrimp factors of production usage ratio. Moreover, the Department needs additional time to analyze the *bona fide* nature of Quoc Viet's sale, which includes gathering data from U.S. Customs and Border Protection. Based on the timing of the case and the additional information that must be gathered, the preliminary results of this new shipper review cannot be completed within 180 days.

Therefore, the Department is extending the time limit for completion of the preliminary results of this new shipper review by 26 days from the original March 19, 2011, deadline. The preliminary results will now be due no later than April 14, 2011. The final results continue to be due 90 days after the issuance of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: March 16, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–6883 Filed 3–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 23, 2011.

SUMMARY: The Department of Commerce (the "Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam"), received on February 28, 2011, meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is February 1, 2010–January 31, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–0413.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005.[1] On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Thong Thuan Seafood Co., Ltd. ("Thong Thuan"). Thong Thuan certified that it is a producer and exporter of the subject merchandise upon which the request was based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and section 351.214(b)(2)(i) of the Department's regulations, Thong Thuan certified that it did not export subject merchandise to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and section 351.214(b)(2)(iii)(A) of the Department's regulations, Thong Thuan certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) ("*Order*").

exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation. As required by section 351.214(b)(2)(iii)(B) of the Department's regulations, Thong Thuan also certified that its export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to section 351.214(b)(2)(iv) of the Department's regulations, Thong Thuan submitted documentation establishing the following: (1) The date on which Thong Thuan first shipped subject merchandise for export to the United States and; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[2]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and section 351.214(d)(1) of the Department's regulations, we find that the request submitted by Thong Thuan meets the threshold requirements for initiation of a NSR for shipments of shrimp from Vietnam produced and exported by Thong Thuan.[3] The POR is February 1, 2010—January 31, 2011.[4] The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation.[5]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME entity-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Thong Thuan, which will include a section requesting information with regard to Thong Thuan's export activities for separate rate purposes. The NSR will proceed if the response provides sufficient indication that Thong Thuan is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Thong Thuan in accordance with section 751(a)(2)(B)(iii) of the Act and section 351.214(e) of the Department's regulations. Because Thong Thuan certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Thong Thuan only for subject merchandise which Thong Thuan both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with sections 351.305 and 351.306 of the Department's regulations.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and sections 351.214 and 351.221(c)(1)(i) of the Department's regulations.

Dated: March 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–6881 Filed 3–22–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See also* "Memorandum to the File, from Paul Walker, Acting Program Manager, "Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Placing CBP data on the record," dated concurrently with this notice.

[3] *See* "Memorandum to the File, from Paul Walker, Acting Program Manager, "Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: New Shipper Initiation Checklist," dated concurrently with this notice.

[4] *See* section 351.214(g)(1)(i)(B) of the Department's regulations.

[5] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA313

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held April 11–14, 2011.

ADDRESSES: The meetings will be held at the Perdido Beach Resort, 27200 Perdido Beach Boulevard, Orange Beach, AL 36561; telephone: (251) 981–9811.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, April 13, 2011

3:30 p.m.—The Council meeting will begin with a review of the agenda and approval of the minutes.

3:45 p.m.–4 p.m.—The Council will receive a presentation titled "Fisheries 101."

4 p.m.–6 p.m.—The Council will receive public testimony on exempted fishing permits (EFPs), if any; Final Action on the interim rule for gag grouper; and hold an open public comment period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Thursday, April 14, 2011

8:30 a.m.–10 a.m.—The Council will receive presentations on fishery dependent/independent sampling and on the oil spill recovery in the Gulf of Mexico.

10 a.m.–3:45 p.m.—The Council will review and discuss reports from the committee meetings as follows: Budget/Personnel; Coastal Migratory Pelagic (Mackerel); Sustainable Fisheries/Ecosystem; Joint Allocation/Reef Fish; Advisory Panel Selection; Scientific & Statistical Committee Selection; and Reef Fish.

3:45 p.m.–4:15 p.m.—Other Business items will follow from. The Council will conclude its meeting at approximately 4:15 p.m.

Committees

Monday, April 11, 2011

8:30 a.m.–11:30 a.m.—Closed Session—The Advisory Panel Selection Committee/Full Council will meet to conduct the bi-annual appointment of members to the various Advisory Panels.

1 p.m.–3:30 p.m.—Closed Session—The Scientific & Statistical Committees Selection Committee/Full Council will meet to conduct the bi-annual appointment of members to the various Scientific & Statistical Committees.

3:30 p.m.–4 p.m.—The Budget/Personnel Committee will receive a report on the 2011 Council budget.

4 p.m.–5 p.m.—A joint meeting of the Allocation and Reef Fish Management Committees will be held to discuss Reef Fish

Amendment 28 that addresses grouper allocation.

—Recess—

Tuesday, April 12, 2011

8:30 a.m.–11:30 a.m. & 1 p.m.–3 p.m.—The Sustainable Fisheries/Ecosystem Management Committee will review a public hearing draft of the Generic Annual Catch Limits/Accountability Measure Amendment. The Committee will also review sector separation scenarios.

3 p.m.–5 p.m.—The Coastal Migratory Pelagics (Mackerel) Management Committee will review the public hearing draft of Amendment 18 to the Coastal Migratory Pelagics Fishery Management Plan

—Recess—

Immediately Following Committee Recess—There will be an informal open public question and answer session on Gulf of Mexico Fishery Management Issues.

Wednesday, April 13, 2011

8:30 a.m.–11:30 a.m. & 1 p.m.–3:15 p.m.—The Reef Fish Management Committee will discuss the final action on the gag interim rule; review a public hearing draft of Reef Fish Amendment 32 to the Reef Fish Fishery Management Plan; received a report on the greater amberjack update assessment; receive a summary of the scoping meetings on the Earned Income Requirement/Crew Size Amendment to the Reef Fish Fishery Management Plan; and receive a report on the Reef Fish Limited Access Privilege Program Advisory Panel meeting.

3:15 p.m.–3:30 p.m.–The Joint Shrimp/Reef Fish Management Committee will discuss the adjustment to the shrimp trawl red snapper bycatch mortality target goal.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 18, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–6878 Filed 3–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ29

NOAA Policy on Prohibited and Approved Uses of the Asset Forfeiture Fund

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

ACTION: Notice.

SUMMARY: The Magnuson-Stevens Fishery Conservation and Management Act authorizes the Secretary of Commerce through NOAA to pay certain enforcement related costs from sums received as fines, penalties, and forfeitures of property for violations of any marine resource law enforced by the Secretary. Fines, penalties, and forfeitures of property received by NOAA are deposited in an enforcement asset forfeiture fund. NOAA finalized its policy on March 16, 2011, to clearly articulate prohibited and approved uses of these funds to ensure no conflict of interest—either real or perceived—associated with its use while continuing to promote a sound enforcement program dedicated to conserving and protecting our nation's marine resources.

SUPPLEMENTARY INFORMATION:

I. NOAA Policy on Prohibited and Approved Uses of the Asset Forfeiture Fund

Strong management and oversight of the Asset Forfeiture Fund (AFF) is essential to ensuring the public's trust in the National Oceanic and Atmospheric Administration's (NOAA) Enforcement Program. While the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides broad statutory authority for use of the AFF,[1] the Department of Commerce and NOAA are implementing this policy limiting approved uses as a means of ensuring no conflict of interest—real or perceived—is associated with the use of the AFF while continuing to promote a sound enforcement program dedicated to conserving and protecting our Nation's marine resources. To this end, the policy provides guidance on the prohibited and approved uses of the AFF that are consistent with but narrower than that authorized under applicable legal authorities. The AFF will also be used for compliance assistance activities, consistent with legal authorities, to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community.

The Department believes, as did Congress in establishing the AFF and specifying the authorized uses, that it is appropriate to use the proceeds of NOAA's enforcement program to offset in part the costs of administering that program. Those who violate these laws should help offset the cost of protecting our marine resources in lieu of those costs being borne by taxpayers. Further, the availability of these funds for enforcement reduces the requirement for additional appropriations and expands NOAA's ability to respond to violations of the laws it is charged with enforcing.

To ensure accountability and transparency in AFF accounting, NOAA has taken a number of actions to improve oversight, management, and tracking of the AFF in addition to this policy. NOAA has identified and is tracking AFF monies received and expended, and has centralized the AFF approval processes for expenditures. In the FY 2012 budget submission, NOAA will identify and account for the AFF in its annual budget. For FY 2011, an annual operating budget has been developed for the AFF based upon this policy, and modifications to that budget must be approved by the NOAA Chief Financial Officer.

[1] Memorandum from Cameron F. Kerry, Commerce Department General Counsel, and Lois Schiffer, NOAA General Counsel, Legal Opinion Regarding Collection and Use of Fines, Penalties, and Forfeiture Proceeds Pursuant to Section 311(e)(1) of the Magnuson-Stevens, Fishery Conservation and Management Act (Feb. 28, 2011).

This policy specifically applies only to funding derived from fines, penalties, and property forfeitures associated with violations of marine resource laws (Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Lacey Act, among others) and expended by NOAA's enforcement program (OLE and GCEL) under section 311(e)(1)(A)–(F) and 311(f)(4) of the Magnuson-Stevens Act.[2] NOAA has established detailed accounting measures to track receipts and control expenditures under these authorities.

In particular, NOAA has established separate budget codes to segregate fines and penalties collected under section 311(f)(4) (for violations of the Northeast Multispecies Fishery Management Plan) within the larger AFF to ensure those funds are expended in New England and subject to the provisions of this policy.

NOAA's Office of Law Enforcement's (OLE) National Enforcement Operations Manual and the Office of the General Counsel for Enforcement and Litigation's (GCEL) Operating Procedures Manual will include the new policy and any additional guidance.

Prohibited Uses

The policy *prohibits* the use of the AFF for the following activities:

- Funding for any NOAA employee labor, benefits, or awards;
- Funding for any vehicle purchases or leases, including patrol vehicles, undercover vehicles, all terrain vehicles, vehicles assigned to agents to carry out their enforcement duties, or associated equipment, upgrades, modification, or maintenance of current vehicles;
- Funding for any vessel purchases or leases, including patrol vessels, undercover vessels, or associated equipment upgrades, modification, or maintenance of current vessels;
- Funding for any domestic or foreign travel that is not related to specific investigations, enforcement proceedings, or required training, such as attendance at general conferences or seminars, except as specifically authorized below;
- Funding for any training that is not specifically required by policy as an integral part of an employee's job as detailed below; and
- Funding for the purchase of any equipment that is not directly related to a specific investigation or enforcement proceeding, including weapons and ammunition, uniforms, copiers or facsimile machines, desktop or laptop computers, Blackberries or other PDAs, cell phones or radios, video or audio recording equipment, or office furniture.

Approved Uses

The policy *approves* the use of the AFF for certain specific enforcement-related activities:

- Compliance assistance as discussed further below;
- Costs directly related to the proper storage of seized fish, vessels, or other property during a civil or criminal proceeding;
- Rewards of not less than 20 percent of the penalty collected or $20,000, whichever is the lesser amount, for information related to enforcement actions;
- Valid liens, mortgages, and claims against, or interest in, seized or forfeited property;
- Reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with NOAA;
- Expenditures directly related to specific investigations and enforcement proceedings; such as travel specific to an individual investigation or individual case or enforcement proceeding, interviewing expert witnesses, witness participation at trials, hearings or depositions, expert witness fees, case support contracts, forensic examinations, or required forensic or evidence handling supplies;
- Attendance at international and domestic bi- or multi-lateral meetings and negotiations to discuss enforcement specific agenda items;
- Training and associated travel required by policy for all enforcement personnel, mandatory courses at the Federal Law Enforcement Training Center and required field training assignments;
- Annual in-service or national training for OLE and GCEL employees;
- Training for Federal and State partners regarding Federal statutes and regulations under NOAA's authorities;
- Enforcement unique information technology infrastructure, including hardware, software and maintenance, required specifically for NOAA's enforcement and legal systems and databases;
- Interagency agreement and contract costs for the administrative adjudication process, including Administrative Law Judges;
- Costs associated with review of past enforcement actions in the aggregate (*e.g.* hiring a third party to review past investigations and enforcement proceedings conducted by NOAA);
- Efforts to combat international unregulated and unreported fishing through annual funding to the International Monitoring, Control, and Surveillance Network ; and,
- Costs related to independent audits of the fund to ensure proper collection and use of fines, penalties, and forfeiture proceeds.

Compliance Assistance

The Department is implementing activities to better serve the needs of its stakeholders and improve the way NOAA engages and interacts with its regulated community. This new component is aimed at improving and expanding NOAA's compliance assistance, collaboration, and outreach activities. Activities funded from the AFF may include, but are not limited to:

- Regional enforcement workshops and training sessions to bring together and educate stakeholders on regulations and other requirements associated with fishery management plans, National Marine Sanctuaries, and activities related to the protection of endangered species and marine mammals;
- Educating and involving fishermen in the development of potential solutions to regional and national enforcement-related issues; and
- Improving communication with regulated communities and the general public relative to enforcement issues through increased OLE and GCEL participation in Regional Fishery Management Council meetings or Sanctuary Advisory Committee meetings, improved websites, easy to understand compliance guides, and timely electronic or other notifications of changes in regulations.

Consistent with section 311(e)(1)(F) of the Magnuson-Stevens Act, these compliance assistance activities would likely be funded by the AFF through agreements with Federal and State partners, or in the case of efforts addressing Northeast Multispecies specifically, through enforcement proceeds available to the Secretary under section 311(f)(4) of the Magnuson-Stevens Act.

Dated: March 17, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–6869 Filed 3–18–11; 4:15 pm]

BILLING CODE 3510–22–P

[2] This policy does not address certain proceeds collected and disbursed pursuant to 16 U.S.C. 973o (South Pacific Tuna Act), 16 U.S.C. 1437(f)(1)(C) (National Marine Sanctuaries Act), and 16 U.S.C. 1824(e)(8) (governing the Western Pacific Insular Areas). Those proceeds are segregated from the AFF and subject to the specific uses detailed in those statutory provisions.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA309

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice; notification of quota for bowhead whales.

SUMMARY: NMFS provides notification of the aboriginal subsistence whaling quota for bowhead whales that it has assigned to the Alaska Eskimo Whaling Commission (AEWC), and other limitations deriving from regulations adopted at the 59th Annual Meeting of the International Whaling Commission (IWC). For 2011, the quota is 75 bowhead whales struck. This quota and other limitations govern the harvest of bowhead whales by members of the AEWC.

DATES: Effective March 23, 2011.

ADDRESSES: Office of International Affairs, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, (202) 482–3689.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 59th Annual Meeting of the IWC, the Commission set catch limits for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead catch limits were based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 2008 through 2012, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 2003 through 2007 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2010 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2011 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2011 will not exceed the catch limits set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

Through its cooperative agreement with the AEWC, NOAA has assigned 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 11 villages whose cultural and subsistence needs have been documented, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. For example:

- Only licensed whaling captains or crew under the control of those captains may engage in whaling.
- They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization.
- The aboriginal hunters must have adequate crew, supplies, and equipment.
- They may not receive money for participating in the hunt.
- No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts.
- Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: March 18, 2011.

Jean Pierre-Ple,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2011–6889 Filed 3–22–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: FY 2008 and 2009 schedule of fees; establish the FY 2010 schedule of fees revision.

SUMMARY: The Commission charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization (SRO) rule enforcement programs (National Futures Association (NFA), a registered futures association, and the contract markets are referred to as SROs). The calculation of the fee amounts to be charged for FY 2010 is based upon an average of actual program costs incurred during FY 2007, 2008, and 2009, as explained below. The FY 2010 fee includes adjustments to program costs incurred in FY 2008 and 2009, which are being revised as a result of an internal review of program costs. The FY 2010 fee schedule and the revision of FY 2008 and 2009 fees are set forth in the **SUPPLEMENTARY INFORMATION** section. Electronic payment of fees is required.

DATES: The FY 2010 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than May 23, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Carney, Chief Financial Officer, Commodity Futures Trading Commission, (202) 418–5477, Three Lafayette Centre, 1155 21st Street, NW. Washington, DC 20581. For information on electronic payment, contact Jennifer Fleming, Three Lafayette Centre, 1155 21st Street NW. Washington, DC 20581, (202) 418–5034.

SUPPLEMENTARY INFORMATION:

I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered

futures associations [1] and designated contract markets (DCM), which are collectively referred to herein as SROs, regulated by the Commission.

II. Background Information

A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program. Fees are calculated by extracting direct labor costs for rule enforcement reviews from the agency's Budget Programming Accounting Codes (BPAC), which captures each employee's time by project, for a three-year period. The agency then adds an overhead factor for benefits and general administrative costs. The agency uses a three-year rolling average to cover fluctuations in the number of hours spent reviewing each SRO over time. In recognition of the fact that the cost of conducting a review may not correlate directly with the size of a particular SRO, the agency also calculates an alternate fee that takes the volume into account. The agency charges the SRO the lesser of the two fees.

Subsequent to an internal review, the Commission found that in FY 2008 and 2009 not all direct program labor costs were captured and that some direct costs were misapplied to SRO reviews. As the formula for calculating the FY 2010 fee to be charged to the SROs includes actual costs incurred in FY 2008 and 2009, the fees for those years are being revised, and the FY 2010 fee is being adjusted to account for the revisions. In addition, the FY 2009 fee that was assessed on USFE is being rescinded,[2] as USFE ceased operations on December 31, 2008. All adjustments are shown in the tables that follow.

B. Overhead Rate

Once the agency determines the direct costs for rule enforcement review of each SRO, it applies an overhead rate to cover employee benefits and other administrative costs. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 140 percent for fiscal year 2007, and 144 percent for fiscal year 2008, and 147 percent for 2009.

C. Calculation of FY 2010 Fees

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which appears at 17 CFR part 1 Appendix B, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year. To provide relief to SROs who may bear a disproportionately large share of program costs, the Commission's alternate formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each SRO is equal to the lesser of actual costs based on the three-year historical average of costs for that SRO or one-half of average costs incurred by the Commission for each SRO for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all SROs for the most recent three years. The formula for calculating the second factor is: $0.5a + 0.5\ vt =$ current fee. In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across SROs over the last three years, and "t" equals the average annual costs for all SROs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years. The following table summarizes the data used in the calculations and the resulting fee for each entity for FY 2010. The 3-year average actual cost calculations were derived using the FY 2008 and 2009 fees as they are revised elsewhere in this notice:

FY 2010 FEES

	3-year average actual costs	3-year % of volume	2010 Fee (lesser of actual or calculated fee)
Chicago Board of Trade	$188,085	0.291273	$188,085
Chicago Mercantile Exchange	145,952	55.5839	145,952
New York Mercantile Exchange	572,494	12.5373	363,321
Kansas City Board of Trade	27,303	0.1351	14,482
ICE Futures U.S	144,847	2.3324	86,762
Minneapolis Grain Exchange	104,706	0.0488	52,653
HedgeStreet	23,272	0.002	11,636
Chicago Climate Futures Exchange	21,705	0.0205	10,853
US Futures Exchange	0	0.0001	0
OneChicago	1,157	0.1791	1,157
Subtotal	1,229,521		847,901
National Futures Association	561,531		561,531

[1] NFA is the only registered futures association.

[2] *See generally* 74 FR 46115 (Sep. 8, 2009).

FY 2010 FEES—Continued

	3-year average actual costs	3-year % of volume	2010 Fee (lesser of actual or calculated fee)
Total	1,791,052		1,436,432

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

a. Actual three-year average costs equal $188,085

b. The alternative computation is: (.5) ($188,085) + (.5) (.291273) ($1,229,521) = $273,105

c. The fee is the lesser of a or b; in this case $188,085

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2008 through 2010 was $561,531 (one-third of $1,684,592.85). The fee to be paid by the NFA for the current fiscal year is $561,531, plus the adjustment to the fees that were published for FY 2008 and 2009 in the **Federal Register**.[3]

D. Revision of FY 2008 and 2009 Fees

This year, Commission conducted an internal review of its SRO fee process that has resulted in adjustments to the fees owed by several SROs and NFA. As a result of the internal review FY 2008 and FY 2009 fees for the Commission's review of the rule enforcement programs at the registered futures associations and SROs regulated by the Commission are accordingly revised as follows:

FY 2009 FEE ADJUSTMENTS

Entity	2009 Assessment	Adjustment	2009 Revision
Chicago Board of Trade	$77,371	$6,522	$83,893
Chicago Mercantile Exchange	121,071	0	121,071
New York Mercantile Exchange	197,535	141,670	339,205
Kansas City Board of Trade	10,127	13,210	23,337
ICE Futures U.S	32,683	1,815	34,498
Minneapolis Grain Exchange	62,449	(30,420)	32,029
HedgeStreet	14,375	8	14,383
Chicago Climate Futures Exchange	12,259	7	12,266
US Futures Exchange	18,601	(18,601)	0
OneChicago	1,157	0	1,157
National Futures Association	179,641	347,243	526,884
Total	727,270	461,453	1,188,723

FY 2008 FEE ADJUSTMENTS

Entity	2008 Assessment	Adjustment	2008 Revision
Chicago Board of Trade	$146,077	$56,971	$203,048
Chicago Mercantile Exchange	124,734	0	124,734
New York Mercantile Exchange	144,893	104,026	248,919
Kansas City Board of Trade	11,119	174	11,293
ICE Futures U.S	37,662	1,678	39,340
Minneapolis Grain Exchange	28,181	(27,413)	768
HedgeStreet	10,194	13	10,207
Chicago Climate Futures Exchange	8,306	3	8,309
US Futures Exchange	14,602	68	14,670
OneChicago	15,836	262	16,098
National Futures Association	450,419	(3,045)	447,374
Total	992,022	132,737	1,124,760

E. Final Amounts Due

To determine the final amount due from each SRO, the adjustments for FY 2008 and 2009 must be added to or subtracted from FY 2010 fee. For example: Chicago Board of Trade (CBOT) will owe $251,578 which is computed as follows, $188,085 (2010 fee) + $6,522 (2009 adjustment amount) + $56,971 (2008 adjustment amount) = $251,578. The following chart provides the calculation for each SRO:

Entity	2008 Adjustment	2009 Adjustment	2010 Fee	Due
Chicago Board of Trade	$56,971	$6,522	$188,085	$251,578

[3] *See* 73 FR 44707 (Sep. 29, 2008) and 74 FR 46115 (Sep. 8, 2009).

Entity	2008 Adjustment	2009 Adjustment	2010 Fee	Due
Chicago Mercantile Exchange	0	0	145,952	145,952
New York Mercantile Exchange	104,026	141,670	363,321	609,017
Kansas City Board of Trade	174	13,210	14,482	27,866
ICE Futures U.S	1,678	1,815	86,762	90,255
Minneapolis Grain Exchange	(27,413)	(30,420)	52,653	(5,180)
HedgeStreet	13	8	11,636	11,657
Chicago Climate Futures Exchange	3	7	10,853	10,863
OneChicago	262	0	1,157	1,419
National Futures Association	(3,045)	347,243	561,531	905,729

III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 USC 3720). For information about electronic payments, please contact Jennifer Fleming at (202) 418–5034 or *jfleming@cftc.gov,* or see the CFTC Web site at *http://www.cftc.gov,* specifically, *http://www.cftc.gov/cftc/cftcelectronicpayments.htm.*

Issued in Washington, DC, on March 14, 2011 by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. 2011–6821 Filed 3–22–11; 8:45 am]

BILLING CODE 6351–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Call for Innovative National Environmental Policy Act (NEPA) Pilot Project Proposals

AGENCY: Council On Environmental Quality.

ACTION: Notice of Availability, Call for Innovative National Environmental Policy Act (NEPA) Pilot Project Proposals.

SUMMARY: The Chair of the Council on Environmental Quality (CEQ) invites the public and federal agencies to nominate innovative pilot projects that accomplish the NEPA goals of transparency and informed decisionmaking in a more timely and effective manner. Nominations will be accepted via online submission until June 15, 2011. CEQ will track and publicize the progress of selected pilot projects as part of its NEPA Pilot Program, to identify and promote more efficient ways to do effective environmental reviews that can be replicated across the Federal Government. The NEPA Pilot Project Program is part of CEQ's broad effort to modernize and reinvigorate federal agency implementation of NEPA through innovation, public engagement, and transparency. The NEPA Pilot Program will also facilitate a review under section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review," of provisions of CEQ's NEPA Regulations that may be outmoded, ineffective, insufficient, or excessively burdensome. 76 FR 3821, Jan. 21, 2011; 40 CFR 1500–1508.

DATES: The Call for Innovative National Environmental Policy Act (NEPA) Pilot Project Proposals is available as of March 17, 2011. Nominations may be submitted online until June 15, 2011, and will not be considered after that date.

ADDRESSES: The Call for Innovative National Environmental Policy Act (NEPA) Pilot Project Proposals and online nomination submission form is available at *http://whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project.*

FOR FURTHER INFORMATION CONTACT: Katie Scharf, Deputy General Counsel, Council on Environmental Quality, 202–456–2464.

SUPPLEMENTARY INFORMATION: On March 17, 2011, the Council on Environmental Quality (CEQ) issued a Call for Innovative National Environmental Policy Act (NEPA) Pilot Project Proposals, inviting the public and federal agencies, to nominate innovative pilot projects that accomplish the NEPA goals of transparency and informed decisionmaking in a more timely and effective manner. Nominations may be submitted online at *http://whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project.* Nominations will be accepted until June 15, 2011, and will be publicly posted on the CEQ Web site, *http://www.whitehouse.gov/ceq.* CEQ will not consider nominations submitted after June 15, 2011.

In consultation with a panel of agency NEPA experts, CEQ will select up to five (5) nominated pilot projects for further study and trial implementation, based on their potential to: (1) Reduce the costs and/or time needed to complete the NEPA process; (2) ensure environmental protection; (3) improve the quality and transparency of Federal agency decision-making; and (4) yield replicable best practices or procedural innovations that can be replicated by other agencies or applied to other Federal actions or programs so as to improve NEPA implementation beyond a specific project. CEQ will coordinate with relevant agencies to track project implementation for the purpose of evaluating and publicizing the efficiencies realized. These outcomes will be published on the CEQ Web site and on the NEPA Web site, *nepa.gov.* Where appropriate, CEQ will advocate that agencies incorporate these best practices into new or revised NEPA procedures. Accordingly, the NEPA Pilot Program will facilitate a review under section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review," of provisions of CEQ's NEPA Regulations that may be outmoded, ineffective, insufficient, or excessively burdensome. 76 FR 3821, Jan. 21, 2011; 40 CFR 1500–1508.

(Authority: 42 U.S.C. 4342, 4344)

Dated: March 17, 2011.

Nancy H. Sutley,

Chair.

[FR Doc. 2011–6760 Filed 3–22–11; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, April 25, 2011, from 8:30 a.m. to 5:30 p.m. and Tuesday, April 26, 2011, from 8:30 a.m. to 2 p.m. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership,

1201 New York Avenue, NW., 4th Floor, Washington, DC 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities; including, the review and development of Strategic Action Plans for the National Ocean Council.

Dated: March 16, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–6822 Filed 3–22–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 23, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Office of Special Education and Rehabilitative Services (OSERS) Peer Review Data Form.

OMB Control Number: 1820–0583.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion; annually.

Affected Public: Individuals or households

Total Estimated Number of Annual Responses: 1,875.

Total Estimated Number of Annual Burden Hours: 470

Abstract: Office of Special Education and Rehabilitative Services (OSERS) Peer Reviewer Data Form is used to support the peer review process panel assignments and to update individual peer reviewer personal information in the OSERS Peer Reviewer System database. This information is requested when an individual is asked to serve as a peer reviewer and/or updated biannually by persons who previously served as peer reviewers. The information is used by OSERS staff and the peer review contractor to identify potential reviewers who would be appropriate to review specific types of grant applications for funding; provide background information on each potential reviewer; and provide information on any reasonable accommodations that might be required by the individual. The changes to the data form include adding two check boxes that will allow first-time respondents and repeat reviewers to complete the entire form or simply update contact information. This alleviates the need for a separate form, currently in use, to update reviewer contact information. Also, to promote electronic submission, all the fields were made "fillable" through the use of text or check boxes.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4450. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–6841 Filed 3–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the

proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 23, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Report of Randolph-Sheppard Vending Facility Program.

OMB Control Number: 1820–0009.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 702.

Abstract: The Vending Facility Program authorized by the Randolph-Sheppard Act provides persons who are blind with remunerative employment and self-support through the operation of vending facilities on federal and other property. Under the Randolph-Sheppard Program, state licensing agencies recruit, train, license and place individuals who are blind as operators of vending facilities (including cafeterias, snack bars, vending machines, etc.) located on federal and other properties. In statute at 20 U.S.C. 107a(6)(a), the Secretary of Education is directed through the Commissioner of the Rehabilitation Services Administration (RSA) to conduct periodic evaluations of the programs authorized under the Randolph-Sheppard Act. Additionally, section 107b(4) requires entities designated as the state licensing agency to "make such reports in such form and containing such information as the Secretary may from time to time require* * *." The information to be collected is a necessary component of the evaluation process and forms the basis for annual reporting. These data are also used to understand the distribution type and profitability of vending facilities throughout the country. Such information is useful in providing technical assistance to state licensing agencies and property managers. The Code of Federal Regulations, at 34 CFR 395.8, specifies that vending machine income received by the state from federal property managers can be distributed to blind vendors in an amount not to exceed the national average income for blind vendors. This amount is determined through data collected using RSA–15: Report of Randolph-Sheppard Vending Facility Program. In addition, the collection of information ensures the provision and transparency of activities referenced in 34 CFR 395.11 and 395.12 related to training and disclosure of program and financial information.

The following changes are found in the revised information collection (IC) RSA–15: Report of Randolph-Sheppard Vending Facility Program. In Section II, E. "Facilities on Public Property, Line 4 was expanded to include a breakdown of the types of public facilities. Since this information is currently used to calculate the total number of facilities on public property, there is no additional reporting burden. In Section IV, an additional column was added to capture other sources of funding for expenditures other than those traditionally associated with the program. At the end of the reporting form, a text box was added for notes or explanations at the request of the respondents, and contact information was also requested to expedite follow-up by RSA for approval of the reports. The instructions were modified accordingly to accommodate these changes in the form and to clarify information.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4549. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–6842 Filed 3–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–521–000; FERC–521]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due May 23, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–521–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://*

www.ferc.gov/help/submission-guide.asp. eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp*. First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp*, to establish a username and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket No. IC11–521. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–521 "Payments for Benefits from Headwater Benefits" (OMB No. 1902–0087) is used by the Commission to implement the statutory provisions of section 10(f) of the Federal Power Act (FPA) (16 USC 803). The FPA authorizes the Commission to determine headwater benefits received by downstream hydropower project owners. Headwater benefits is the additional energy production possible at a downstream hydropower project resulting from the regulation of river flows by an upstream storage reservoir.

When the Commission completes a study of a river basin, it determines headwater benefits charges that will be apportioned among the various downstream beneficiaries. A headwater benefits charge and the cost incurred by the Commission to complete an evaluation are paid by downstream hydropower project owners. In essence, the owners of non-Federal hydropower projects that directly benefit from a headwater improvement must pay an equitable portion of the annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury. The regulations provide for apportionment of these costs between the headwater project and downstream projects based on downstream energy gains and propose equitable apportionment methodology that can be applied to all rivers basins in which headwater improvements are built. The Commission requires owners of non-Federal hydropower projects to file data for determining annual charges as outlined in 18 Code of Federal Regulations (CFR) part 11.

ACTION: The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–521	3	1	40	120

Estimated cost burden to respondents is $8,213.77 (120 hours/2,080 hours [1] per year, times $142,372 [2] = $8,213.77). The cost per respondent is $2,738.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submission of responses.

Dated: March 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6741 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Estimated number of hours and employee works each year.

[2] Estimated average annual cost per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–14–000]

Analysis of Horizontal Market Power Under the Federal Power Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission seeks comment on whether, and if so, how, the Commission should revise its approach for examining horizontal

market power concerns in transactions under § 203 of the Federal Power Act to reflect the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission on August 19, 2010 (2010 Guidelines), and what impact the 2010 Guidelines should have, if any, on the Commission's analysis of horizontal market power in its electric market-based rate program.

DATES: Comments are due May 23, 2011.

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

- *Agency Web site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Hug (Legal Information), Office of General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8009.

Eugene Lee (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6195.

SUPPLEMENTARY INFORMATION:

Notice of Inquiry

March 17, 2011

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on whether, and if so, how, the Commission should revise its approach for examining horizontal market power concerns in transactions under § 203 of the Federal Power Act (FPA) [1] to reflect the Horizontal Merger Guidelines issued by the Department of Justice (DOJ) and Federal Trade Commission (FTC) (together, the Antitrust Agencies) on August 19, 2010 (2010 Guidelines), and what impact the 2010 Guidelines should have, if any, on the Commission's analysis of horizontal market power in its electric market-based rate program under § 205 of the FPA.[2]

[1] 16 U.S.C. 824b.

[2] 16 U.S.C. 824d.

I. Background

A. Section 203

2. Section 203(a)(4) of the FPA requires the Commission to approve a proposed disposition, consolidation, acquisition, or change in control if it finds that the proposed transaction will be consistent with the public interest. In the 1996 Merger Policy Statement, the Commission set out the three factors it generally considers when analyzing whether a proposed § 203 transaction is consistent with the public interest: effect on competition, effect on rates, and effect on regulation.[3] In analyzing whether a proposed transaction will have an adverse effect on competition, the Merger Policy Statement adopted the Antitrust Agencies' 1992 Horizontal Merger Guidelines (1992 Guidelines) [4] and its five-step framework,[5] as well as the Appendix A analytic screen, based on the 1992 Guidelines, to identify transactions that would not harm competition. The components to a screen analysis are as follows: (1) Identify the relevant products; (2) for the purpose of determining the size of the geographic market, identify customers who may be affected by the merger; (3) for the purpose of determining the size of the geographic market, identify potential suppliers to each identified customer (includes a delivered price test (DPT) analysis, consideration of transmission capability, and a check against actual trade data); and (4) analyze market concentration using the Herfindahl-Hirschman Index (HHI) [6] thresholds from the 1992 Guidelines.[7]

3. The Commission adopted the HHI thresholds set forth in the 1992 Guidelines to classify a market as unconcentrated, moderately concentrated, and highly concentrated, and to assess the competitive significance of the change in HHI resulting from a proposed transaction. The Commission, based on the 1992 Guidelines, classifies a market as unconcentrated if the post-merger HHI in the market is below 1,000 points and considers mergers that result in an unconcentrated market as unlikely to have adverse competitive effects, regardless of the change in HHI resulting from the merger.

4. The Commission classifies a market as moderately concentrated if the post-merger HHI ranges from 1,000 to 1,800. Under the Commission's standards, a merger in a moderately concentrated market that involves an increase in HHI of more than 100 points is considered to potentially raise significant competitive concerns. The Commission currently classifies a market as highly concentrated if the post-merger market's HHI exceeds 1,800 and considers mergers that result in a change in HHI that is greater than 50 points as potentially raising significant competitive concerns. If the change in HHI exceeds 100 points, the merger is presumed to create or enhance market power.

5. The Commission revised its regulations to reflect the adoption of the 1992 Guidelines in the analysis of horizontal market power in § 203 transactions. Section 2.26 of the Commission's regulations states:

> (a) The Commission has adopted a Policy Statement on its policies for reviewing transactions subject to section 203. That Policy Statement can be found at 77 FERC 61,263 (1996). The Policy Statement is a complete description of the relevant guidelines. Paragraphs (b)-(e) of this section are only a brief summary of the Policy Statement.
>
> * * * * *
>
> (c) Effect on competition. Applicants should provide data adequate to allow analysis under the Department of Justice/Federal Trade Commission Merger Guidelines, as described in the Policy

[3] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,111 (1996), *reconsideration denied,* Order No. 592–A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). The Energy Policy Act of 2005 added the requirement that the Commission find that the transaction will not result in inappropriate cross-subsidization, unless the Commission determines that such cross-subsidization will be consistent with the public interest. Energy Policy Act of 2005, Public Law 109–58, 1289, 119 Stat. 594, 982–83 (2005), *codified,* 16 U.S.C. 824b(a)(4).

[4] U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (1992), as revised (1997) (1992 Guidelines).

[5] Merger Policy Statement, FERC Stats. & Regs. at 30,118. The five steps are: (1) Defining the markets; (2) evaluating whether the extent of concentration of the market raise concerns about potential adverse competitive effects; (3) assessing whether entry could counteract such concerns; (4) assessing any efficiency gains that cannot otherwise be gauged; and (5) assessing whether either party to the merger would fail without the merger, causing its assets to exit the market.

[6] The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Both the Antitrust Agencies and the Commission use HHI to assess market concentration. *See infra* P 10, 12.

[7] Merger Policy Statement, FERC Stats. & Regs. at 30,119–20, 30,128–37.

Statement and Appendix A to the Policy Statement.[8]

6. The Commission described the 1992 Guidelines as a well-accepted standard approach for evaluating the competitive effects of mergers but noted that the 1992 Guidelines "are just that—guidelines. They provide analytical guidance but do not provide a specific recipe to follow."[9] In addition, the Commission noted analytic challenges in applying the 1992 Guidelines to the electric power industry, "because the industry is evolving very rapidly and because the industry has some unique features." The Commission explained that an analysis that follows the 1992 Guidelines still requires many assumptions and judgments to fit specific fact situations.[10] In the Supplemental Policy Statement, the Commission noted that the Antitrust Agencies use "informal and non-public processes for reviewing transactions," in contrast to the public process used by the Commission.[11] The courts have also acknowledged that the Commission's standard of review is whether a transaction is "consistent with the public interest," and that the Commission was not intended to enforce antitrust policy in conjunction with the Antitrust Agencies.[12]

7. The Commission subsequently issued Order No. 642, which stated that, consistent with the 1992 Guidelines, applicants that failed the competitive screen could submit evidence to assist the Commission in evaluating the following factors to show that the proposed transaction would not have an adverse effect on competition: (1) The potential adverse competitive effects of the merger; (2) whether entry by competitors can deter anticompetitive behavior or counteract adverse competitive effects; (3) the effects of efficiencies that could not be realized absent the merger; and (4) whether one or both of the merging firms is failing and, absent the merger, the failing firm's assets would exit the market.[13]

B. Market-Based Rates

8. With respect to the Commission's analysis of horizontal market power in its market-based rate program, the Commission employs two preliminary screens—the wholesale market share indicative screen and the pivotal supplier indicative screen—and failure of either screen results in a rebuttable presumption of horizontal market power. The intent of the indicative screens is to identify those sellers that raise no horizontal market power concerns and can otherwise be considered for market-based rate authority.[14]

9. The Commission has traditionally employed a 20 percent threshold for the wholesale market share screen (a seller with a market share of less than 20 percent passes the screen).[15] The Commission stated that the use of such conservative thresholds at the indicative screen stage of a proceeding is warranted because the indicative screens are meant to identify those sellers that raise no horizontal market power concerns, as well as those that require further examination.[16] The Commission reasoned that a 20 percent threshold for the wholesale market share screen struck the proper balance between identifying sellers that may present market power concerns, while avoiding the risk of "false negatives" and imposing undue regulatory burdens on sellers. Several protesters argued that the 20 percent threshold was too low in light of the 1992 Guidelines' statement that firms with 35 percent or more market share have market power. The Commission rejected these arguments, stating that a market with five equal-sized firms with 20 percent market shares will have an HHI of 2,000, which is above the HHI threshold used in the 1992 Guidelines for a highly-concentrated market,[17] and that market power is more likely to be present at lower market shares in markets for commodities with low demand price-responsiveness, like electricity, than in markets with high demand elasticity.[18]

10. Sellers that fail either indicative screen may rebut the presumption of market power in one of several ways, including by submitting a DPT analysis. The DPT defines the relevant market by identifying potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity for each season and load condition. The results of the DPT can be used for pivotal supplier, market share, and market concentration analyses. In analyzing market concentration in this context, the Commission uses an HHI threshold of 2,500.[19] In rejecting arguments that it should, consistent with the 1992 Guidelines, adopt an HHI threshold of 1,800, the Commission noted that the Department of Justice had previously advocated an HHI threshold of 2,500 for analyzing whether to grant market-based pricing for oil pipelines and that the Department of Justice had further stated that the Commission could reasonably conclude that an entity participating in a market with an HHI threshold of less than 2,500 had a rebuttable presumption that it did not have market power.[20]

II. The 2010 Guidelines

11. The 2010 Guidelines set forth how the Antitrust Agencies will evaluate the competitive impact of mergers, focusing on whether a merger results in anticompetitive effects such as "encouraging one or more firms to raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives."[21] The 2010 Guidelines replace the 1992 Guidelines and explain several changes to the analysis set forth in the 1992 Guidelines.

12. Specifically, the 2010 Guidelines raise the HHI thresholds used by the Antitrust Agencies to classify a market as unconcentrated, moderately concentrated, or highly concentrated. The 2010 Guidelines modify the thresholds adopted in the 1992 Guidelines for the purpose of classifying a particular market and assessing the

[8] 18 CFR 2.26.

[9] Merger Policy Statement, FERC Stats. & Regs. at 30,118.

[10] *Id.*

[11] *FPA Section 203 Supplemental Policy Statement,* FERC Stats. & Regs. ¶ 31,253, at P 69–70 (2007), *order on clarification,* 122 FERC ¶ 61,157, at P 15 (2008).

[12] *Northeast Utilities Service Co.,* 993 F.2d 937, 947 (1st Cir. 1993).

[13] *Revised Filing Requirements Under Part 33 of the Commission's Regulations,* Order No. 642, FERC Stats. & Regs. ¶ 31,111, at 31,898 (2000) (1992 Guidelines sec. 0.2 Overview). These factors are codified at 18 CFR 33.3(f). The 2010 Guidelines retain these steps, but place less emphasis on them.

[14] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 62, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010).

[15] *AEP Power Marketing, Inc.,* 97 FERC ¶ 61,219, at 61,969 (2001); *AEP Power Marketing, Inc.,* 107 FERC ¶ 61,018, at P 8, 102 (April 14 Order), *order on reh'g,* 108 FERC ¶ 61,026 (2004).

[16] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

[17] As explained further below, the Antitrust Agencies use HHI as a method of classifying a market based on its level of concentration. *See infra* P 12. Under the 1992 Guidelines, a market with an HHI above 1,800 is considered to be highly concentrated. 1992 Guidelines sec. 1.5.

[18] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 80, 89–93.

[19] *Id.* P 110–111; April 14 Order, 107 FERC ¶ 61,018 at P 110–11.

[20] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 110 (citing Comments of the U.S. Department of Justice in response to *Notice of Inquiry Regarding Market-Based Ratemaking for Oil Pipelines,* Docket No. RM94–1–000 (Jan. 18 1994)).

[21] 2010 Guidelines sec. 1.

significance of a post-merger change in HHI, as summarized in the table below.

HHI (MARKET CONCENTRATION) THRESHOLDS

Market	1992 Guidelines	2010 Guidelines
Unconcentrated	<1000	<1500
Moderately Concentrated	1000–1800	1500–2500
Highly Concentrated	>1800	>2500
HHI Changes Potentially Raising Significant Competitive Concerns		
Moderately Concentrated Markets	>100	>100
Concentrated Markets	>50	>100, <200
HHI Changes Presumed Likely to Enhance Market Power		
Concentrated Markets	>100	>200

13. In addition, the 2010 Guidelines place less emphasis on market definition and the use of a prescribed formula for considering the effects of a merger than the 1992 Guidelines. Instead, the 2010 Guidelines state that the Antitrust Agencies will engage in a fact-specific inquiry using a variety of analytical tools, including direct evidence of competition between the parties and economic models that are designed to quantify the extent to which the merged firm can raise prices as a result of the merger.[22] Section 6.3 of the 2010 Guidelines provides additional guidance as to how the methods in the 2010 Guidelines can be tailored to analyze markets involving relatively undifferentiated products. In particular, § 6.3 of the 2010 Guidelines identifies factors that may indicate that a merged firm may find it profitable to unilaterally suppress output in a market involving relatively undifferentiated products.[23]

14. The 2010 Guidelines also address the potential competitive effects arising from partial acquisitions and minority ownership.[24] The proposed analysis of a partial acquisition focuses on three principal effects: (1) Whether the acquiring company will be able to influence the competitive conduct of the target firm;[25] (2) whether the partial acquisition will reduce the financial incentive to compete because losses from one owned firm are offset by gains at the other;[26] and (3) whether the partial acquisition enables companies to access non-public competitive information that can lead to coordinated activity by the firms.[27]

III. Request for Comments

15. The Commission seeks comment on whether, and if so, how, the Commission should revise its approach for examining horizontal market power concerns in transactions under § 203 of the FPA to reflect the 2010 Guidelines. As discussed above, the 2010 Guidelines place less emphasis on market definition and the use of a prescribed formula for considering the effects of a merger than the 1992 Guidelines. Should the Commission adopt this approach? If so, what elements of this approach should the Commission adopt? And how should the Commission incorporate these elements into its analysis? The 2010 Guidelines' reduced emphasis on market definition and prescribed formulas aside, should the Commission adopt the revised HHI levels in the 2010 Guidelines in its analysis of whether a proposed transaction will adversely affect competition under § 203 of the FPA?

16. For example, the 2010 Guidelines raise the HHI threshold for an unconcentrated market and classify a market where the post-merger HHI is below 1,500 as unconcentrated. Should the Commission adopt the 2010 Guidelines' classification? Or should the Commission continue to classify a market as unconcentrated if the post-merger HHI in the market is below 1,000 points?

17. While the 2010 Guidelines continue to retain a threshold of 100 points for the purpose of assessing the significance of a post-merger change in HHI in a moderately concentrated market, the 2010 Guidelines classify a market with a post-merger HHI of between 1,500 and 2,500 as moderately concentrated. Should the Commission adopt the 2010 Guidelines' classification of a moderately concentrated market, or should the Commission continue to classify a market as moderately concentrated if the post-merger HHI ranges from 1,000 to 1,800?

18. Under the 2010 Guidelines, a market is classified as highly concentrated if the post-merger HHI exceeds 2,500, and mergers that involve an increase in HHI of between 100 and 200 points are considered to potentially raise significant competitive concerns, with mergers resulting in a change of greater than 200 points presumed to be likely to enhance market power. Should the Commission adopt the 2010 Guidelines' thresholds for the purpose of identifying a market as highly concentrated and assessing the competitive significance of a change in HHI resulting from a merger? Or should the Commission continue to classify a market as highly concentrated if the post-merger market's HHI exceeds 1,800? Also, should the Commission continue to consider mergers that result in a change in HHI that is greater than 50 points as potentially raising significant competitive concerns, and that mergers resulting in a change in HHI exceeding 100 points are presumed to create or enhance market power?

19. Should the Commission adopt any of the other aspects of the 2010 Guidelines? If so, which ones, and how would the Commission incorporate these aspects into its market power analysis?

[22] *Id.*

[23] *Id.* sec. 6.3.

[24] *Id.* sec. 13.

[25] The 2010 Guidelines state that a voting interest in the target firm or specific governance rights, such as the right to appoint members to the board of directors, can permit such influence. *Id.*

[26] The 2010 Guidelines state that acquiring a minority position in a rival might significantly blunt the incentive of the acquiring firm to compete aggressively because it shares in the losses inflicted on the rival. *Id.*

[27] Issues relating to partial acquisitions are among the issues before the Commission in Docket No. RM09–16–000. *Control and Affiliation for Purposes of Market-Based Rate Requirements under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,650 (2010).

20. In this regard, we note that there are fundamental differences between the Commission's process and that of the Antitrust Agencies. The Commission's review process is public and parties can intervene and submit comments, while the review process at the Antitrust Agencies is nonpublic and closed. The Commission's merger decision is based on a factual record shaped not only by the applicant, but by intervenors and subject to analysis by Commission staff. The merger decisions by the Antitrust Agencies are based on information submitted by the applicant, non-public information gathered by the agency staff, as well as the economic analysis performed by agency staff. The Commission seeks comment on whether the differences between the Commission's process for considering applications under §§ 203 and 205 of the FPA and the process used by the Antitrust Agencies for considering mergers affect the extent to which the Commission should adopt the 2010 Guidelines.

21. Finally, the Commission also seeks comment on what impact the 2010 Guidelines should have, if any, on the Commission's analysis of horizontal market power in its electric market-based rate program.

IV. Comment Procedures

22. The Commission invites interested persons to submit comments, and other information on the matters and issues identified in this notice. Comments are due May 23, 2011. Comments must refer to Docket No. RM11–14–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

23. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

24. Commenters that are not able to file comments electronically must send an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

25. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

V. Document Availability

26. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

27. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6738 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2288–004.
Applicants: Optim Energy Marketing LLC.
Description: Optim Energy Marketing LLC submits tariff filing per 35: Optim Market Based Rates Tariff to be effective 8/20/2010.
Filed Date: 03/14/2011.
Accession Number: 20110314–5216.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2763–001.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5213.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–1835–002.
Applicants: Kingsport Power Company.
Description: Kingsport Power Company submits tariff filing per 35: 20110314 Kingsport AEP Op Co MBR Concurrence to be effective 10/8/2010.
Filed Date: 03/14/2011.
Accession Number: 20110314–5039.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–1838–002.
Applicants: Wheeling Power Company.
Description: Wheeling Power Company submits tariff filing per 35: 20110314 Wheeling AEP Op Co MBR Concurrence to be effective 10/8/2010.
Filed Date: 03/14/2011.
Accession Number: 20110314–5041.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–2334–009.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): ATC Notice of Succession Amendment II to be effective 2/9/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5050.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–2530–001.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35: Compliance Filing: SVP IA Modifications to be effective 2/28/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5000.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3068–000.
Applicants: PJM Interconnection, L.L.C.
Description: Cancellation of WMPAs of PJM Interconnection, L.L.C.
Filed Date: 03/11/2011.
Accession Number: 20110311–5162.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3069–000.
Applicants: Viridian Energy, Inc.
Description: Viridian Energy, Inc. submits tariff filing per 35.12: Viridian Energy, Inc. Market Based Rate Tariff to be effective 3/14/2011.
Filed Date: 03/14/2011.

Accession Number: 20110314–5169.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3070–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35.13(a)(2)(iii): Crystal Falls WDS Agreement Filing to be effective 5/15/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5187.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3071–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35.13(a)(2)(iii): Ontonagon WDS Agreement Filing to be effective 5/15/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5198.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3072–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35.13(a)(2)(iii): Alger Delta WDS Agreement filing to be effective 5/15/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5211.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3073–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1636R2 Kansas Electric Power Cooperative, Inc. to be effective 10/1/2010.
Filed Date: 03/14/2011.
Accession Number: 20110314–5214.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3074–000.
Applicants: Optim Energy Marketing LLC.
Description: Optim Energy Marketing LLC submits tariff filing per 35.15: Cancellation of 3/08/2011 filing to be effective 8/20/2010.
Filed Date: 03/14/2011.
Accession Number: 20110314–5215.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–11–000.
Applicants: Northern Pass Transmission LLC.
Description: Amendment to Application of Northern Pass Transmission LLC for an Order Pursuant to Section 204 of the FPA Authorizing the Issue and Sale of Securities.
Filed Date: 03/11/2011.
Accession Number: 20110311–5164.
Comment Date: 5 p.m. Eastern Time on Monday, March 21, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6765 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–158–000.
Applicants: Alcor Energy Solutions, LLC.
Description: Form 556 of Alcor Energy Solutions, LLC.
Filed Date: 02/28/2011.
Accession Number: 20110228–5120.
Comment Date: None Applicable.

Docket Numbers: QF11–160–000.
Applicants: Peak Oilfield Service Company.
Description: Form 556 of Peak Oilfield Service Company under QF11–160.
Filed Date: 03/02/2011.
Accession Number: 20110302–5058.
Comment Date: None Applicable.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status

may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6766 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–49–000.
Applicants: Ameren Energy Generating Company.
Description: Application of Ameren Energy Generating Company to seek approval of the sale of the Columbia Energy Center to the City of Columbia, Missouri.
Filed Date: 03/11/2011.
Accession Number: 20110311–5159.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–69–000.
Applicants: Rockland Wind Farm LLC.
Description: Rockland Wind Farm LLC's Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 03/10/2011.
Accession Number: 20110310–5109.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–496–019; ER99–3658–005.
Applicants: Northeast Utilities Service Company, Select Energy, Inc.
Description: Supplemental Information of Northeast Utilities Service Company and Select Energy, Inc.
Filed Date: 03/11/2011.
Accession Number: 20110311–5127.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER10–1809–002.
Applicants: RED–Scotia, LLC.
Description: Amendment to Notification of Change in Facts of RED–Scotia, LLC.
Filed Date: 03/10/2011.
Accession Number: 20110310–5052.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER10–2019–002; ER10–2018–001; ER11–2495–000; ER10–2010–001; ER10–1959–001; ER10–2007–001; ER10–2013–001; ER10–2015–001; ER10–2017–001; ER10–3280–001; ER10–2012–001; ER10–2021–001; ER10–2011–001; ER10–2014–001; ER10–2024–001; ER11–2495–000.
Applicants: PPL New Jersey Solar, LLC, PPL Electric Utilities Corporation, Lower Mount Bethel Energy, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, PPL EnergyPlus, LLC, PPL Great Works, LLC, PPL Maine, LLC, PPL Wallingford Energy LLC, PPL New Jersey Biogas, LLC, PPL Renewable Energy, LLC.
Description: Amendment to Triennial Market-Based Rate Update for the Northeast Region of the PPL Northeast Companies.
Filed Date: 03/11/2011.
Accession Number: 20110311–5158.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER10–2176–001; ER10–2178–001; ER10–2184–001; ER10–2172–001.
Applicants: Constellation Energy Commodities Group, R.E. Ginna Nuclear Power Plant, LLC, AES NewEnergy, Inc., Baltimore Gas and Electric Company, Constellation Power Source Generation LLC, Nine Mile Point Nuclear Station, LLC, Safe Harbor Water Power Corporation, Calvert Cliffs Nuclear Power Plant LLC, CER Generation, LLC, Constellation Energy Commodities Group M, Handsome Lake Energy, LLC, Constellation Mystic Power, LLC, Criterion Power Partners, LLC.
Description: Constellation Amendment to NE Triennial.
Filed Date: 03/09/2011.
Accession Number: 20110309–5056.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 30, 2011.

Docket Numbers: ER10–2812–001.
Applicants: GenConn Devon LLC.
Description: GenConn Devon LLC submits tariff filing per 35: GenCon Devon FERC MBR Tariff to be effective 9/21/2010.
Filed Date: 03/10/2011.
Accession Number: 20110310–5045.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER10–3169–001.
Applicants: Michigan Power Limited Partnership.
Description: Michigan Power Limited Partnership submits tariff filing per 35: Revisions to Michigan Power Limited Partnership Baseline MBR Tariff to be effective 9/29/2010.
Filed Date: 03/11/2011.
Accession Number: 20110311–5132.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–2509–002.
Applicants: Energetix, Inc.
Description: Energetix, Inc. submits tariff filing per 35: Energetix Supplement to December 2010 Tariff Filing to be effective 3/11/2011.
Filed Date: 03/10/2011.
Accession Number: 20110310–5079.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–2563–002.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation submits tariff filing per 35: NYSEG Supplement to December 2010 Tariff Filing to be effective 3/11/2011.
Filed Date: 03/10/2011.
Accession Number: 20110310–5070.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–2564–002.
Applicants: Rochester Gas and Electric Corporation.
Description: Rochester Gas and Electric Corporation submits tariff filing per 35: RGE Supplement to December 2010 Tariff Filing to be effective 3/11/2011.
Filed Date: 03/10/2011.
Accession Number: 20110310–5076.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–2914–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): NSP–GRE–Lyon Amendment to be effective 2/19/2011.
Filed Date: 03/10/2011.
Accession Number: 20110310–5067.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–2915–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): GRE–NSP–Pilot Knob Amendment to be effective 2/19/2011.
Filed Date: 03/10/2011.
Accession Number: 20110310–5077.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–2999–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35: Compliance Filing for Order No. 676–E to be effective 4/1/2011.
Filed Date: 03/10/2011.
Accession Number: 20110310–5094.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–3058–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): EPC Agreement between Niagara Mohawk and Nine Mile Point to be effective 3/8/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5021.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3059–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Demand Resource Related Changes to be effective 6/1/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5077.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3060–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Submission of Notice of Cancellation of Interim Large Generator Interconnection Agreement.
Filed Date: 03/10/2011.
Accession Number: 20110310–5122.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–3061–000.
Applicants: Carolina Power & Light Company.
Description: Request of Carolina & Light Power Company for a Limited Waiver of Market-Based Tariff Restrictions.
Filed Date: 03/10/2011.
Accession Number: 20110310–5123.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: ER11–3062–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Revisions to Appendix G of Market Rule 1 to be effective 5/11/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5109.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3063–000.
Applicants: Delmarva Power & Light Company.
Description: Delmarva Power & Light Company—Notice of Cancellation of Mutual Operating Agreement.
Filed Date: 03/11/2011.
Accession Number: 20110311–5123.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3064–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Trans-Allegheny Interstate Line Co's revisions to Attach H–18A of the PJM Tariff to be effective 6/1/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5131.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3065–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Attachment AD—2011 Amendatory Agreement to be effective 3/1/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5133.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3066–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35: OATT Revised Attachment Q to be effective 4/1/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5148.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Docket Numbers: ER11–3067–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Helper City Morgantown Interconnection Agreement to be effective 2/11/2011.
Filed Date: 03/11/2011.
Accession Number: 20110311–5153.
Comment Date: 5 p.m. Eastern Time on Friday, April 1, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–17–000.
Applicants: FirstEnergy Service Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, Trans-Allegheny Interstate Line Company
Description: Amendment of FirstEnergy Service Company, et. al. to application for short-term financing authority for Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and Trans-Allegheny Interstate Line Company.
Filed Date: 03/11/2011.
Accession Number: 20110311–5160.
Comment Date: 5 p.m. Eastern Time on Monday, March 21, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF10–512–000.
Applicants: General Electric Company.
Description: Refund Report of General Electric Company.
Filed Date: 03/10/2011.
Accession Number: 20110310–5080.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Docket Numbers: QF10–638–000.
Applicants: Wind Energy Prototypes, LLC.
Description: Refund Report of Wind Energy Prototypes, LLC.
Filed Date: 03/10/2011.
Accession Number: 20110310–5081.
Comment Date: 5 p.m. Eastern Time on Thursday, March 31, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Dated: March 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6767 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–50–000.
Applicants: HL Power Company, LP.
Description: CMS Energy Corporation submits Application for Authorization under section 203 of the Federal Power Act and Requests for Waivers under EC11–50.
Filed Date: 03/15/2011.
Accession Number: 20110315–0203.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1786–001.
Applicants: Credit Suisse Energy, LLC.
Description: Credit Suisse Securities (USA) LLC's Notice of Non-Material Change in Status.
Filed Date: 03/15/2011.
Accession Number: 20110315–5181.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–136–002.
Applicants: Michigan Electric Transmission Co., LLC.
Description: Refund Report of Michigan Electric Transmission Company, LLC.
Filed Date: 03/15/2011.
Accession Number: 20110315–5165.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–2295–001.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–03–15 CAISO's Transmission Control Agreement Compliance Filing to be effective 11/23/2010.
Filed Date: 03/15/2011.
Accession Number: 20110315–5079.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–2424–003.
Applicants: Pinetree Power-Tamworth, Inc.
Description: Pinetree Power-Tamworth, Inc. submits tariff filing per 35.17(b): Pinetree Power—Tamworth, Inc.—Third Supplement to Filing of Initial Tariff to be effective 1/1/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5137.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3075–000.
Applicants: CR Clearing, LLC.
Description: CR Clearing, LLC submits tariff filing per 35.37: Corrected Tariff in Conjunction with Triennial Market Power to be effective 3/16/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3076–000.
Applicants: Avista Turbine Power, Inc.
Description: Avista Turbine Power, Inc. submits tariff filing per 35.15: Cancellation of MBR Tariff to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5001.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3077–000.
Applicants: Cow Branch Wind Power, LLC.
Description: Cow Branch Wind Power, LLC submits tariff filing per 35.37: Corrected Tariff in Conjunction with Triennial Market Power Upate to be effective 3/16/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3078–000.
Applicants: Harvest Windfarm, LLC.
Description: Harvest Windfarm, LLC submits tariff filing per 35.37: Corrected Tariff in Conjunction with Triennial Market Power Update to be effective 3/16/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5003.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3079–000.
Applicants: Exelon Wind 4, LLC.
Description: Exelon Wind 4, LLC submits tariff filing per 35.37: Corrected Tariff in Conjunction with Triennial Market Power Update to be effective 3/16/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5004.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3080–000.
Applicants: Wind Capital Holdings, LLC.
Description: Wind Capital Holdings, LLC submits tariff filing per 35.37: Corrected Tariff in Conjunction with Triennial Market Power Update to be effective 3/16/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5005.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3082–000.

Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Company submits tariff filing per 35.13(a)(2)(iii): Attachment K Clean Up to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3083–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Queue No. V4–072 WMPA Original Service Agreement No. 2788 to be effective 2/14/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5060.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3084–000.
Applicants: The Detroit Edison Company.
Description: The Detroit Edison Company submits tariff filing per 35: MBR Compliance Filing to be effective 3/2/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5071.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3085–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Revisions to the PJM Tariff regarding Deferred Security to be effective 5/16/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5080.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3086–000.
Applicants: DC Energy California, LLC.
Description: DC Energy California, LLC submits tariff filing per 35.1: DC Energy California, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5081.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3087–000.
Applicants: DC Energy Dakota, LLC.
Description: DC Energy Dakota, LLC submits tariff filing per 35.1: DC Energy Dakota, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5082.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3088–000.
Applicants: DC Energy Mid-Atlantic, LLC.
Description: DC Energy Mid-Atlantic, LLC submits tariff filing per 35.1: DC Energy Mid-Atlantic, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5083.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3089–000.
Applicants: DC Energy Midwest, LLC.
Description: DC Energy Midwest, LLC submits tariff filing per 35.1: DC Energy Midwest, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5084.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3090–000.
Applicants: DC Energy New England, LLC.
Description: DC Energy New England, LLC submits tariff filing per 35.1: DC Energy New England, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5086.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3091–000.
Applicants: DC Energy New York, LLC.
Description: DC Energy New York, LLC submits tariff filing per 35.1: DC Energy New York, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5091.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3092–000.
Applicants: DC Energy Southwest, LLC.
Description: DC Energy Southwest, LLC submits tariff filing per 35.1: DC Energy Southwest, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5094.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3093–000.
Applicants: DC Energy Texas, LLC.
Description: DC Energy Texas, LLC submits tariff filing per 35.1: DC Energy Texas, LLC to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5095.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3094–000.
Applicants: DC Energy, LLC.
Description: DC Energy, LLC submits tariff filing per 35.1: DC Energy, LLC—Baseline Filing to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5096.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3095–000.
Applicants: Deseret Generation & Transmission Co-operator, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc. submits tariff filing per 35.13(a)(2)(iii): section 205 Tariff Filing 3–15–2011 to be effective 4/1/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5097.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3096–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–03–15 CAISO's Filing in Compliance with Order 676–E to be effective 4/1/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5101.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3097–000.
Applicants: DTE Energy Trading, Inc.
Description: DTE Energy Trading, Inc. submits tariff filing per 35: MBR Compliance Filing to be effective 3/2/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5108.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3098–000.
Applicants: Viridian Energy PA, LLC.
Description: Viridian Energy PA, LLC submits tariff filing per 35.12: Viridian Energy PA LLC Market Based Rate Tariff to be effective 3/15/2011.
Filed Date: 03/15/2011.
Accession Number: 20110315–5128.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Docket Numbers: ER11–3099–000.
Applicants: California Independent System Operator Corporation.
Description: Petition for Waiver of OASIS Requirements of the California Independent System Operator Corporation.
Filed Date: 03/15/2011.
Accession Number: 20110315–5175.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 5, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6787 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2732–001.
Applicants: Emera Energy Services, Inc.
Description: Emera Energy Services, Inc. submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5272.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2733–001.
Applicants: Emera Energy U.S. Subsidiary No. 1, Inc.
Description: Emera Energy U.S. Subsidiary No. 1, Inc. submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5274.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2734–001.
Applicants: Emera Energy U.S. Subsidiary No. 2, Inc.
Description: Emera Energy U.S. Subsidiary No. 2, Inc. submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5275.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2736–001.
Applicants: Emera Energy Services Subsidiary No. 1 LLC.
Description: Emera Energy Services Subsidiary No. 1 LLC submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5231.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2737–001.
Applicants: Emera Energy Services Subsidiary No. 2 LLC.
Description: Emera Energy Services Subsidiary No. 2 LLC submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5233.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2741–001.
Applicants: Emera Energy Services Subsidiary No. 3 LLC.
Description: Emera Energy Services Subsidiary No. 3 LLC submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5252.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2749–001.
Applicants: Emera Energy Services Subsidiary No. 4 LLC.
Description: Emera Energy Services Subsidiary No. 4 LLC submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5262.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER10–2752–001.
Applicants: Emera Energy Services Subsidiary No. 5 LLC.
Description: Emera Energy Services Subsidiary No. 5 LLC submits tariff filing per 35: Amendment to MBR Tariff to be effective 5/13/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5264.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–2334–010.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): ATC Notice of Succession Amendment, III to be effective 2/9/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5057.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–2334–011.
Applicants: Midwest Independent Transmission System Operator Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): ATC Amendment Notice of Succession V to be effective 2/9/2011.
Filed Date: 03/14/2011.
Accession Number: 20110314–5065.
Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–2334–012.
Applicants: Midwest Independent Transmission System Operator Inc.
Description: Midwest Independent Transmission System Operator, Inc.

submits tariff filing per 35.17(b): ATC Amendment Notice of Succession VI to be effective 2/9/2011.

Filed Date: 03/14/2011.

Accession Number: 20110314–5123.

Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Docket Numbers: ER11–3081–000.

Applicants: Florida Power & Light Company, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, NextEra Energy SeaBrook, LLC.

Description: Request of Florida Power & Light Company and its Market-Regulated Power Sales Affiliates Operating Nuclear Generating Facilities For Waivers of Affiliate Restrictions Related to Nuclear Fuel Design/Procuement/Fabrication.

Filed Date: 03/14/2011.

Accession Number: 20110314–5293.

Comment Date: 5 p.m. Eastern Time on Monday, April 4, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6777 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–94–000]

The Brooklyn Union Gas Company; Notice of Filing

Take notice that on March 15, 2011, The Brooklyn Union Gas Company filed to make minor revisions to its Statement of Operating Conditions as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Dated: March 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6740 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at PJM INterconnection, L.L.C., Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and Commission staff may attend upcoming PJM Interconnection, L.L.C., (PJM) meetings, as well as other subcommittee or task force 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 PJM Web site.[1] The Commission and Commission staff may attend the following meetings:

[1] For example, PJM Subcommittees and Task Forces of the standing committees (Operating,

Continued

PJM Members Committee

- March 30, 2011 (Wilmington, DE)
- March 31, 2011 (Wilmington, DE)
- May 17–19, 2011 (Cambridge, MD)
- June 23, 2011 (Wilmington, DE)
- August 25, 2011 (Wilmington, DE)
- September 22, 2011 (Wilmington, DE)
- December 8, 2011 (Wilmington, DE)

PJM Markets and Reliability Committee

- March 23, 2011 (Wilmington, DE)
- April 27, 2011 (Wilmington, DE)
- June 22, 2011 (Wilmington, DE)
- July 20, 2011 (Wilmington, DE)
- August 17, 2011 (Wilmington, DE)
- September 15, 2011 (Wilmington, DE)
- October 12, 2011 (Wilmington, DE)
- November 16, 2011 (Wilmington, DE)
- December 22, 2011 (Wilmington, DE)

PJM Market Implementation Committee

- March 17, 2011 (Wilmington, DE)
- April 12, 2011 (Wilmington, DE)
- May 10, 2011 (Wilmington, DE)
- June 14, 2011 (Wilmington, DE)
- July 12, 2011 (Wilmington, DE)
- August 9, 2011 (Wilmington, DE)
- September 13, 2011 (Wilmington, DE)
- October 4, 2011 (Wilmington, DE)
- November 1, 2011 (Wilmington, DE)
- December 13, 2011 (Wilmington, DE)

PJM Planning Committee and Transmission Expansion Advisory Committee

- April 15, 2011 (Wilmington, DE)
- May 12, 2011 (Wilmington, DE)
- June 9, 2011 (Wilmington, DE)
- July 7, 2011 (Wilmington, DE)
- August 4, 2011 (Wilmington, DE)
- September 8, 2011 (Wilmington, DE)
- October 5, 2011 (Wilmington, DE)
- November 3, 2011 (Wilmington, DE)
- December 15, 2011 (Wilmington, DE)

PJM Liaison Committee

- July 26, 2011 (TBD)
- October 19, 2011 (TBD)

PJM Governance Assessment Special Team

- March 15, 2011 (Wilmington, DE)
- March 16, 2011 (Wilmington, DE)
- March 31–April 1, 2011 (Wilmington, DE)
- April 20, 2011 (Wilmington, DE)
- May 5–6, 2011 (Radnor, PA)
- May 25–26, 2011 (Radnor, PA)
- June 2–3, 2011 (Radnor, PA)
- June 16–17, 2011 (Radnor, PA)

PJM Sub-Regional RTEP Committee

(Mid-Atlantic, Southern and Western Regions)

- Various Dates

PJM Load Analysis Subcommittee

- Various Dates

PJM Credit Subcommittee

- Various Dates

PJM Cost Development Subcommittee

- Various Dates

PJM Transaction Issues Senior Task Force

- Various Dates

PJM Regional Planning Process Task Force

- Various Dates

PJM Intermittent Resources Task Force

- Various Dates

PJM Load Management Task Force

- Various Dates

PJM Demand Response Dispatch Senior Task Force

- Various Dates

PJM Regulation Performance Senior Task Force

- Various Dates

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission including the following:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. ER06–456, *PJM Interconnection, L.L.C.*
Docket No. ER08–686, *Pepco Holdings, Inc.*
Docket No. EL08–47, *PJM Interconnection, L.L.C.*
Docket No. ER08–386, *Potomac-Appalachian Transmission Highline, LLC*
Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, LLC*
Docket No. ER09–1063, *PJM Interconnection, L.L.C.*
Docket No. ER09–1148, *PPL Electric Utilities Corporation*
Docket No. ER10–159, *Public Service Electric and Gas Company*
Docket No. EL10–40, *EPIC Merchant Energy NJ/PA, L.P.,* v. *PJM Interconnection, L.L.C.*
Docket Nos. ER10–253 and EL10–14, *Primary Power, LLC*
Docket Nos. ER10–1562 and ER10–2254, *Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*
Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL11–20, *PJM Power Providers Group* v. *PJM Interconnection, L.L.C.*
Docket No. ER11–2688, *PSEG Energy Resources & Trade LLC and PSEG Fossil LLC*
Docket No. EL10–63, *EnerNOC, Inc.* v. *FirstEnergy*
Docket No. EL11–23, *EnerNOC, Inc.*
Docket No. ER11–2183, *American Electric Power Service Corporation*
Docket No. ER11, 2074, *PJM Interconnection, L.L.C.*
Docket No. ER11–2622, *PJM Interconnection, L.L.C.*
Docket No. ER11–2288, *PJM Interconnection, L.L.C.*
Docket No. ER11–2929, *PJM Interconnection, L.L.C.*
Docket Nos. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*
Docket Nos. ER11–2814 and ER11–2815, *PJM Interconnection, L.L.C. and American Transmission Systems, Inc.*
Docket No. EL11–25, *PPL EnergyPlus, LLC* v. *PJM Interconnection, L.L.C.*
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*

For additional meeting information, see: *http://www.pjm.com/committees-and-groups.aspx and http://www.pjm.com/Calendar.aspx.*

The meetings are open to stakeholders. For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: March 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–6743 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Planning and Market Implementation) and senior standing committees (Members and Markets and Reliability) meet on a variety of different topics; they convene and dissolve on an as-needed basis. Therefore, staff may monitor different meetings as issues arise and according to postings on the PJM Web site.

Lock+ Hydro Friends Fund XXXVI	Project No. 13733–000.
FFP Missouri 8, LLC	Project No. 13752–000.
Solia 6 Hydroelectric, LLC	Project No. 13768–000.

The Commission has received three preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Montgomery Lock and Dam on the Ohio River, in Beaver County, Pennsylvania. The applications were filed by Lock+ Hydro Friends Fund XXXVI for Project No. 13733, FFP Missouri 8, LLC, for Project No. 13752, and Solia 6 Hydroelectric, LLC, for Project No. 13768.[2]

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6776 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] Montgomery Hydro, LLC, also filed a permit application to study the same site for Project No. 13792, which is deemed filed on May 19, 2010.

[3] 18 CFR 4.37 (2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XLVI	Project No. 13734–000.
FFP Missouri 17, LLC	Project No. 13754–000.
Solia 3 Hydroelectric, LLC	Project No. 13765–000.
Three Rivers Hydro LLC	Project No. 13783–000.

The Commission has received four preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Hildebrand Lock and Dam on the Monongahela River, in Monongahela County, West Virginia. The applications were filed by Lock+ Hydro Friends Fund XLVI for Project No. 13734, FFP Missouri 17, LLC, for Project No. 13754, Solia 3 Hydroelectric, LLC, for Project No. 13765, and Three Rivers Hydro LLC for Project No. 13783.[2]

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6775 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] Hildebrand Hydro, LLC, also filed a permit application to study the same site for Project No. 13790, which is deemed filed on May 19, 2010.

[3] 18 CFR 4.37 (2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XLIV	Project No. 13737–000.
FFP Missouri 11, LLC	Project No. 13759–000.
Solia 5 Hydroelectric, LLC	Project No. 13766–000.

The Commission has received three preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Maxwell Lock and Dam on the Monongahela River, in Washington County, Pennsylvania. The applications were filed by Lock+ Hydro Friends Fund XLIV for Project No. 13737, FFP Missouri 11, LLC, for Project No. 13759, and Solia 5 Hydroelectric, LLC, for Project No. 13766.[2]

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] Maxwell Hydro, LLC, also filed a permit application to study the same site for Project No. 13787, which is deemed filed on May 19, 2010.

[3] 18 CFR 4.37 (2010).

Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6774 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XXXVII	Project No. 13738–000.
FFP Missouri 6, LLC	Project No. 13761–000.
Solia 1 Hydroelectric, LLC	Project No. 13770–000.

The Commission has received three preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Emsworth Back Channel Dam on the Ohio River, in Allegheny County, Pennsylvania. The applications were filed by Lock+ Hydro Friends Fund XXXVII for Project No. 13738, FFP Missouri 6, LLC, for Project No. 13761, and Solia 1 Hydroelectric, LLC for Project No. 13770.

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6773 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XLII	Project No. 13739–000.
FFP Missouri 10, LLC	Project No. 13751–000.
Solia 7 Hydroelectric, LLC	Project No. 13778–000.

The Commission has received three preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Braddock Lock and Dam on the Monongahela River, in Allegheny County, Pennsylvania. The applications were filed by Lock+ Hydro Friends Fund XLII for Project No. 13739, FFP Missouri 10, LLC, for Project No. 13751, and Braddock Hydro, LLC for Project No. 13778.

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6772 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XLV	Project No. 13741–000.
FFP Missouri 9, LLC	Project No. 13748–000.
Solia 8 Hydroelectric, LLC	Project No. 13771–000.

The Commission has received three preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Point Marion Lock and Dam on the Monongahela River, in Fayette and Greene Counties, Pennsylvania, and Monongahela County, West Virginia. The applications were filed by Lock+ Hydro Friends Fund XLV for Project No. 13741, FFP Missouri 9, LLC, for Project No. 13748,

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

and Solia 8 Hydroelectric, LLC, for Project No. 13771.[2]

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6771 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XXXIV	Project No. 13742–000.
FFP Missouri 5, LLC	Project No. 13757–000.
Solia 2 Hydroelectric, LLC	Project No. 13764–000.

The Commission has received three preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Emsworth Lock and Dam on the Ohio River, in Allegheny County, Pennsylvania. The applications were filed by Lock+ Hydro Friends Fund XXXIV for Project No. 13742, FFP Missouri 5, LLC, for Project No. 13757, and Solia 2 Hydroelectric, LLC, for Project No. 13764.[2]

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6770 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Lock+ Hydro Friends Fund XLVII	Project No. 13743–000.
FFP Missouri 16, LLC	Project No. 13753–000.
Solia 7 Hydroelectric, LLC	Project No. 13769–000.
Three Rivers Hydro LLC	Project No. 13785–000.

The Commission has received four preliminary permit applications deemed filed on May 18, 2010, at 8:30 a.m.,[1] for proposed projects to be located at the Army Corps of Engineers' Opekiska Lock and Dam on the Monongahela River, in Monongahela County, West Virginia. The applications were filed by Lock+ Hydro Friends Fund XLVII for Project No. 13743, FFP Missouri 16, LLC, for Project No. 13753, Solia 7 Hydroelectric, LLC, for Project No. 13769 and Three Rivers Hydro LLC for Project No. 13785.[2]

On March 24, 2011, at 10 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: March 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–6769 Filed 3–22–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–8868–3]

Summitec 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 Summitec Corporation in

[2] Point Marion Hydro, LLC, also filed a permit application to study the same site for Project No. 13789, which is deemed filed on May 19, 2010.

[3] 18 CFR 4.37 (2010).

accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Summitec Corporation has been awarded a contract to perform work for OPP, and access to this information will enable Summitec Corporation to fulfill the obligations of the contract.

DATES: Summitec Corporation will be given access to this information on or before March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 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 these contract numbers, the contractor will perform the following: Support OPP and Agency position documents, review the scientific technical assessments of potential hazards, exposures, and risks of pesticides and their components to human health and the environment. In addition, the contractor shall create Data Evaluation Records including converting information such as the materials and methods of a study into a format specified by the Program Office including secondary and *Quality Assurance (QA)* contractor reviews, as specified. The contractor may be tasked to draft risk assessments, final rules for tolerances or tolerance exemptions, and regulatory documents such as Biopesticide Regulatory Action Documents. This contract involves no subcontractors.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA. 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 contracts with Summitec Corporation prohibits use of the information for any purpose not specified in these contracts; 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, Summitec 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 Summitec Corporation until the requirements in this document have been fully satisfied. Records of information provided to Summitec Corporation will be maintained by EPA Project Officers for these contracts. All information supplied to Summitec Corporation by EPA for use in connection with these contracts will be returned to EPA when Summitec Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: March 15, 2011.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011–6658 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0284; FRL–8868–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day consultation meeting of the Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel (FIFRA SAP) to consider and review a set of scientific issues related to Integrated Approaches to Testing and Assessment strategies (IATA): Use of new computational and molecular tools.

DATES: The meeting will be held on May 24–26, 2011, from approximately 8:30 a.m. to 5 p.m.

Comments. The Agency encourages that written comments be submitted by May 10, 2011 and requests for oral comments be submitted by May 17, 2011. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after May 10, 2011 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, *see* Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before April 6, 2011.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/SAP* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0284, 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–2011–0284. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. 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.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Jr., PhD, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–3327; *fax number:* (202) 564–8382; *e-mail address: jenkins.fred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, 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 DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

When submitting comments, remember to:

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

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

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

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

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

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

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

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

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2011–0284 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than May 10, 2011, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after May 17, 2011 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than May 17, 2011, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.,* overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are

limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: toxicity testing in the 21st century risk assessment applications (including mode of action framework, adverse Outcome Pathway Concepts, threshold of toxicological concern, QSAR, *in vitro* testing) biomonitoring, thyroid biology (endocrinology), genomics, and risk assessment. The focus will be on both human health and ecological applications so both types of experts are needed (though not necessarily in each area of expertise).

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before April 6, 2011. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors, including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

EPA's Office of Pesticide Programs (OPP) is committed to improving and transforming its approaches to pesticide risk assessment and management via enhanced Integrated Approaches to Testing and Assessment (IATA). OPP views this as a critical time to prepare the program to take advantage of rapidly advancing science and emerging technologies. The goal is to improve OPP's ability to assess hazard and exposure and ensure that pesticides are safe and effective when used according to the label.

The purpose of this SAP Review is to seek SAP guidance about OPP's vision, initial efforts, and plans to adopt IATA. OPP is requesting the SAP's input on plans to maximize use of existing data from similar compounds, including information from new toxicity hazard computational and *in vitro* predictive models, and exposure modeling to target in vivo toxicity testing that is necessary to assess and manage chemical risks appropriately. OPP plans to build on an established foundation of using a variety of tools in a tiered testing and assessment framework by systematically adding new tools, methodologies, and an advancing understanding of key events in toxicity pathways. Two case studies illustrate the use of these approaches.

The first case study illustrates the use of genomic information to assess risk using the fungicide propiconazole as an example. The second case study

illustrates the use of adverse outcome pathway information to assess risk using the antimicrobial triclosan as an example. The purpose of both case studies is to demonstrate the approaches used to develop a mechanistic basis to support efficient and defensible risk assessment.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting), and the meeting agenda will be available by mid-April. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 15, 2011.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2011–6550 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9285–3]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet via teleconference on Wednesday, April 6, 2011, 3:30–4:30 p.m. (ET). The Committee will discuss the recommendations of the Gulf Coast Restoration Workgroup on ways EPA can engage local government officials in the Gulf Coast Ecosystem restoration efforts and other issues of environmental concern to locally elected officials. This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 3:45 p.m.–4:15 p.m. on Wednesday, April 6, 2011. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come first serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The Local Government Advisory Committee meeting will be held by Teleconference on Wednesday, April 6, 2011, at 3:30 p.m.–4:30 p.m. (ET). The Committee's meeting summary will be available after the meeting online at *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, the Designated Federal Officer for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or e-mail at *eargle.frances@epa.gov.*

Information on Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 16, 2011.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2011–6867 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0005; FRL–8865–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before April 22, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number specified within Unit II, 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 specified for the pesticide of interest as shown in the registration application summaries. 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: A contact person is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting in a docket that addresses multiple products, please indicate to which registration numbers your comment applies.

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. Registration Number/File Symbol: 100–1281, 100–RGII. *Docket Number:* EPA–HQ–OPP–2011–0137. *Company Name and Address:* Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. *Active Ingredient:* Mandipropamid. *Proposed Uses:* Outdoor and greenhouse grown ornamentals. *Contact:* Tawanda Maignan, Registration Division (7505P), (703) 308–8050, *maignan.tawanda@epa.gov.*

2. Registration Numbers: 264–824, 264–825. *Docket Number:* EPA–HQ–OPP–2011–0053. *Company Name and Address:* Bayer CropScience LP, 2 T.W., Alexander Drive, Research Triangle Park, NC 27709. *Active Ingredient:* Prothioconazole. *Proposed Uses:* Foliar treatment on alfalfa, potato, and rice; seed treatment on alfalfa, barley, dry bean and peas (crop subgroup 6C), potato, rice, soybeans, triticale, and wheat; and nursery seed and seedlings of conifers and hardwood. *Contact:* Tawanda Maignan, Registration Division (7505P), (703) 308–8050, *maignan.tawanda@epa.gov.*

3. Registration Numbers: 352–541, 352–542. *Docket Number:* EPA–HQ–OPP–2010–1018. *Company Name and Address:* E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. *Active Ingredient:* Quizalofop-p-ethyl. *Proposed Uses:* Sorghum containing the INZEN AII herbicide tolerance trait and rapeseed subgroup 20A (borage, crambe, gold of pleasure (camelina), cuphea, echium, hare's ear mustard, lesquerella, lunaria, meadowfoam, milkweed, mustard seed, oil radish, poppy seed, rapeseed (canola), sesame, and sweet rocket). *Contact:* Mindy Ondish, Registration Division (7505P), (703) 605–0723, *ondish.mindy@epa.gov.*

4. Registration Numbers: 352–541, 352–542. *Docket Number:* EPA–HQ–OPP–2011–0152. *Company Name and Address:* E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. *Active Ingredient:* Quizalofop-p-ethyl. *Proposed Uses:* Propagation of quizalofop-tolerant field corn. *Contact:* Mindy Ondish, Registration Division (7505P), (703) 605–0723, *ondish.mindy@epa.gov.*

5. Registration Numbers: 352–555, 352–768. *Docket Number:* EPA–HQ–OPP–2010–1017. *Company Name and Address:* E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. *Active Ingredient:* Rimsulfuron. *Proposed Uses:* Bushberry subgroup 13–07B and caneberry subgroup 13–07A. *Contact:*

Mindy Ondish, Registration Division (7505P), (703) 605–0723, *ondish.mindy@epa.gov.*

6. Registration Numbers/File Symbols: 352–782, 352–783, 352–785, 352–786, 352–787, 352–ILR, 352–ILN. *Docket Number:* EPA–HQ–OPP–2011–0144. *Company Name and Address:* E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. *Active Ingredient:* Aminocyclopyrachlor. *Proposed Uses:* Pastures, rangeland, and CRP acres. *Contact:* Mindy Ondish, Registration Division (7505P), (703) 605–0723, *ondish.mindy@epa.gov.*

7. Registration Number: 59639–147. *Docket Number:* EPA–HQ–OPP–2010–0621. *Company Name and Address:* Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. *Active Ingredient:* Metconazole. *Proposed Uses:* Tuberous & corm subgroup 1C & bushberry subgroup 13–07B. *Contact:* Tracy Keigwin, Registration Division (7505P), (703) 305–6605, *keigwin.tracy@epa.gov.*

8. Registration Number: 72078–1. *Docket Number:* EPA–HQ–OPP–2010–0621. *Company Name and Address:* Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, Agent for Kureha Corporation, 3–3–2, Nihonbashi-Hamacho, Chuo-ku, Tokyo 103–8552, Japan. *Active Ingredient:* Metconazole. *Proposed Uses:* Tuberous & corm subgroup 1C & bushberry subgroup 13–07B. *Contact:* Tracy Keigwin, Registration Division (7505P), (703) 305–6605, *keigwin.tracy@epa.gov.*

9. Registration Numbers: 10163–209, 10163–277. *Docket Number:* EPA–HQ–OPP–2010–0916. *Company Name and Address:* Gowan Company, 370 South Main Street, Yuma, AZ 85364. *Active Ingredient:* Hexythiazox. *Proposed Uses:* Greenhouse tomatoes. *Contact:* Olga Odiott, Registration Division (7505P), 703–308–9369, *odiott.olga@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 15, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–6661 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0494; FRL–8865–9]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a July 28, 2010, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the July 28, 2010, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received a comment on the notice but it did not merit further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Veronica Dutch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8585; fax number: (703) 308–8090; e-mail address: *dutch.veronica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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–2005–0494. 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 thru Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA registration No.	Product name	Chemical name
000004–00017	Rotenone 1.0% Dust	Cube Resins other than rotenone. Rotenone.
000004–00224	Rotenone 5% Insect Control	Cube Resins other than rotenone. Rotenone.
000004–00315	Bonide Liquid Rotenone/Pyrethrins Spray	Cube Resins other than rotenone. Rotenone.
000004–00404	Bonide Garden Rotenone Dust	Rotenone Cube Resins other than rotenone.

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA registration No.	Product name	Chemical name
000004–00423	Bonide Rotenone Garden Dust or Spray	Cube Resins other than rotenone. Rotenone.
000270–00275	Equi-Dust	Pyrethrins Cube Resins other than rotenone. Rotenone.
000769–00414	Powdered Cube	Rotenone Piperonyl butoxide. Pyrethrins.
000769–00857	Science Red Arrow Insect Spray	Piperonyl butoxide. Pyrethrins Cube Resins other than rotenone. Rotenone.
000869–00186	Green Light Rotenone	Cube Resins other than rotenone. Rotenone.
002217–00145	Garden Protector	Rotenone Cube Resins other than rotenone.
008660–00050	1% Rotenone Garden Dust	Rotenone Cube Resins other than rotenone.
028293–00042	Unicorn Ear Mite Control	Cube Resins other than rotenone. Rotenone.
030573–00002	Pyrellin E.C.	Pyrethrins Rotenone Cube Resins other than rotenone.
033955–00270	Acme 1% Rotenone Garden Guard	Rotenone Cube Resins other than rotenone.
034911–00021	Hi-Yield Rotenone 100 Insecticide Dust	Rotenone.
047000–00026	Pet Dust	Cube Resins other than rotenone. Rotenone.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA company No.	Company name and address
4	Bonide Products, Inc., P.O. Box 1019, Salem, VA 24153–3805.
270	Farnam Companies, Inc., 301 West Osborn Road, Phoenix, AZ 85013.
769	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502.
869	Green Light Company, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
2217	PBI/Gordon Corp., 1217 West 12TH Street, P.O. Box 014090 Kansas City, MO 64101–0090.
8660	United Industries Corporation, P.O. Box 142642, St. Louis, MO 63114–0642.
28293	Phaeton Corporation, P.O. Box 1019, Salem, VA 24153.
73305	Wright Webb Corporation, P.O. Box 1572, Fort Myers, FL 33902.
33955	PBI/Gordon Corp, 1217 West 12th Street, P.O. Box 014090, Kansas City, MO 64101–0090.
34911	Hi-Yield Chemical Company, 6860 N. Dallas Pkwy., Suite 200, Plano, TX 75024.
47000	Chem-Tech, LTD., 4515 Fleur Dr. #303, Des Moines, IA 50321.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments of merit in response to the July 28, 2010, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is the date of publication of this cancellation order in the **Federal Register**. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. 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 canceled or amended to terminate one or more uses. 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, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of

July 28, 2010, (75 FR 44256) (FRL–8831–7). The comment period closed on August 27, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

Because the Agency has potential risk concerns associated with these pesticide products identified in Table 1 of Unit II., EPA will allow registrants to sell and distribute existing stocks of these products until May 2011. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until May 2011.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 14, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–6544 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8867–8]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a January 26, 2011 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the January 26, 2011 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–0123; *fax number:* (703) 308–8090; *e-mail address: tatinclaux.maia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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–2009–1017. 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. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 46 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

The cancellation of the product with EPA Reg. No. 066330–00264 terminates the last butylate product registered for use in the United States.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Product name	Active ingredients
000121–00098	Cutter Insect Repellent El	d-Allethrin
000192–00204	Dexol Mole Killer Pellets2	Zinc phosphide
000239–02381	Triox Vegetation Killer	Prometon
000239–02664	Weed B Gon Ready-Spray	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1); Mecoprop, dimethylamine salt; 2,4-D, dimethylamine salt
000270–00319	AEH Super Concentrate Weed, Grass and Brush Killer	Glufosinate
000432–00552	Pramex 57% Manufacturing Concentrate	Permethrin
000432–00786	Permanone 40% EC LPI	Permethrin
000432–01076	Permanone 40 EC Alternate	Permethrin
000432–01133	Permanone 3.4 E.C.	Permethrin
000432–01141	Permanone Eighty	Permethrin
000538–00222	Scott's Lawn Pro Weed N' 'Feed	MCPA (and salts and esters) Mecoprop (and salts and esters)
000538–00218	Scotts Lawn Pro Lawn Weed Control Plus Fertilizer	MCPA (and salts and esters)

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Product name	Active ingredients
		Mecoprop (and salts and esters)
001022–00476	Chapman PQ–8	Copper, bis
001022–00490	PQ–57	Copper, bis
001022–00491	PQ–15 RTU Clear Wood Preservative	Copper, bis
001022–00492	PQ–20	Copper, bis
001022–00493	PQ–15	Copper, bis
001022–00503	PQ–7	Copper, bis
001022–00504	PQ–56 RTU	Copper, bis
001022–00505	PQ–20 R–T–U Wood Preservative	Copper, bis
002382–00128	Duocide L.A. IGR	MGK 264
		Piperonyl butoxide
		Permethrin
		Pyrethrins
		Pyriproxyfen
002596–00119	Hartz Rabon Flea and Tick Dip for Dogs and Cats	Garadona (cis-isomer)
004822–00512	Raid 260PO	Sodium chlorite
007424–00009	Jasco Termin-8 H2O Clear Wood Preservative	Zinc naphthenate
008660–00178	Golden Vigoro Moss Control Plus Lawn Fertilizer	Ferrous sulfate monohydrate
008660–00205	Koos Moss Control 16–2–4	Ferrous sulfate monohydrate
008660–00248	Lawn Food 10–4–6 Plus Moss Killer	Ferrous sulfate monohydrate
008848–00038	Black Jack Home & Garden #11 Multi-Purpose Insect Spray.	Phenothrin
		Tetramethrin
009499–00001	Oxalis/Spurge X	Ammonium thiosulfate
010806–00105	Pro/Pak Shure Shot Wasp & Hornet Spray	Phenothrin
		Tetramethrin
013283–00013	Rainbow Wasp & Ant Spray	Bioallethrin
033660–00003	Trifluralin Technical	Trifluralin
040849–00052	Enforcer Wasp & Hornet Killer XI	Phenothrin
		Tetramethrin
062719–00619	Oxyfluorfen Technical	Oxyfluorfen
	Oxyfluorfen 4 SC	
062719–00620	Herbicide	Oxyfluorfen
066330–00068	Nutrapic	Chloropicrin
066330–00264	Sutan + 6.7E	Butylate
073049–00258	Neopynamim Technical	Tetramethrin
073510–00008	Marketquest One Drop Flea & Tick Control-2	Permethrin
082498–00005	Glyphosate Technical	Glyphosate
083933–00001	Bioguard Paste	Sodium fluoride
		Boric acid
ID960006	Fyfanon ULV	Malathion
LA000004	Fyfanon ULV	Malathion
LA040013	Penncap-M, Microencapsulated Insecticide	Methyl parathion
NJ950003	Fyfanon ULV	Malathion
NV960001	Fyfanon ULV	Malathion

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Co. No.	Company name and address
121	Spectrum, a Div. of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
192	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502.
239	Scotts Company, The, D/B/A The Ortho Group, P.O. Box 190, Marysville, OH 43040.
270	Farnam Companies, Inc., D/B/A Central Life Sciences, 301 West Osborn Road, Phoenix, AZ 85013.
432	Bayer Environmental Science, 2 T. W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
538	Scotts Company, The, 14111 Scottslawn Road, Marysville, OH 43041.
1022	IBC Manufacturing Co., 416 E. Brooks Rd, Memphis, TN 38109.
2382	Virbac AH, Inc., 13001 St. Charles Rock Road, Bridgeton, MO 63044.
2596	Hartz Mountain Corporation, The, 400 Plaza Drive, Secaucus, NJ 07094.
4822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403.
7424	Jasco Chemical Corporation, 200 Westerly Rd, Bellingham, WA 98226.
8660	United Industries Corp., D/B/A Sylorr Plant Corp, P.O. Box 142642, St. Louis, MO 63114–0642.
8848	Safeguard Chemical Corp., 8203 West 20th St., Suite A, Greeley, CO 80634–4696.
9499	National Chelating Company, 8203 West 20th St., Suite A, Greeley, CO 80634–4696.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Co. No.	Company name and address
10806	Contact Industries, Div. of Safeguard Chemical Corp, 8203 West 20th St., Suite A, Greeley, CO 80634–4696.
13283	Rainbow Technology Corporation, 8203 West 20th St, Suite A, Greeley, CO 80634–4696.
33660	Industria Prodotti Chimici S.P.A., 122 C St NW, Suite 740, Washington, DC 20001.
40849	ZEP Inc., 1310 Seaboard Industrial Blvd. NW, Atlanta, GA 30318.
62719	Dow AgroSciences, LLC, 9330 Zionsville Road #308/2E, Indianapolis, IN 46268–1054.
66330	Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
73049	Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048–6316.
73510	Marketquest, Inc., Agent: Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153–3805.
82498	Agri Packaging & Logistics, Inc., 2509 South Frontage Road, Sardis, MS 38666.
83933	Preschem Pty. Ltd., 12733 Director's Loop, Woodbridge, VA 22192.
ID960006, LA000004, NJ950003, NV960001.	Cheminova, Inc. Washington Office, 1600 Wilson Boulevard, Suite 700, Arlington, VA 22209.
LA040013	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the January 26, 2011, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are subject of this notice is March 23, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. 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 canceled or amended to terminate one or more uses. 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, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of January 26, 2011 (76 FR 4692) (FRL–8856–9). The comment period closed on February 25, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until March 23, 2012, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 16, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–6890 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2011–03]

Filing Dates for the New York Special Election in the 26th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: New York has scheduled a Special General Election on May 24, 2011, to fill the U.S. House seat in the 26th Congressional District vacated by Representative Christopher J. Lee.

Committees required to file reports in connection with the Special General Election on May 24, 2011, shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the New York Special General Election shall file a 12-day Pre-General Report on May 12, 2011, and a 30-day Post-General Report on June 23, 2011. (*See* chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filing in July 2011. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2011 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New York Special General Election by the close of books for the applicable

report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the New York Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New York Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2011.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,200 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR NEW YORK SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL GENERAL (05/24/11) MUST FILE

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Pre-General	05/04/11	05/09/11	05/12/11
Post-General	06/13/11	06/23/11	06/23/11
July Quarterly	06/30/11	07/15/11	07/15/11

[1] These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: March 16, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–6758 Filed 3–22–11; 8:45 am]

BILLING CODE 6715–01–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.: 011790–001.

Title: Dole Ocean Cargo Express/King Ocean Services Limited Space Charter Agreement.

Parties: Dole Ocean Cargo Express, Inc., and King Ocean Services Limited.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW. Suite 1100; Washington, DC 20006.

Synopsis: The amendment would provide for chartering of space on an "as needed as available" basis, update the address of King Ocean, and restate the Agreement.

Agreement No.: 012088–001.

Title: Hanjin and WHS Transpacific Vessel Sharing and Slot Allocation Agreement.

Parties: Hanjin Shipping Co., Ltd. and Wan Hai Lines (Singapore) PTE. Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; Gas Company Tower; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment would add COSCON as a party to the Agreement and revise the name of the Agreement to Hanjin/WHS/COSCON Transpacific Vessel Sharing and Slot Allocation Agreement.

Dated: March 18, 2011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–6859 Filed 3–22–11; 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 part 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.*

AB Plant Shipping USA, L.L.C. (NVO & OFF), 14614 Falling Creek, #132, Houston, TX 77068. Officers: William J. Blair, General Manager (Qualifying Individual), Andrew P. Bottomley, Managing Partner, Application Type: QI Change and Add OFF Service.

All Transport Export Inc (NVO & OFF), 4224 Shackleford Road, Suite 3, Norcross, GA 30093. Officer: Valery Baranouski, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

Ancora Shipping Line, LLC (NVO & OFF), 750 East Sample Road, Bldg. #2, Suite #205, Pompano Beach, FL 33064. Officers: Ford M. Orton, Managing Member/Manager (Qualifying Individual), Nils P. Marsen, Managing Member, Application Type: New NVO & OFF License.

Andrea Bigi dba AB Global Logistics Consulting (OFF), 1010 19th Street, #10, Santa Monica, CA 90403. Officer: Andrea Bigi, Sole Proprietor (Qualifying Individual), Application Type: New OFF License.

Annex Brands, Inc. (NVO & OFF), 5675 DTC Blvd., #280, Greenwood Village, CO 80111. Officers: Joanne Kirkpatrick, International Logistics Officer (Qualifying Individual), Jack R. Lentz, CEO/Chairman/Secretary, Application Type: New NVO & OFF License.

Ark Shipping Line Limited Liability Company (NVO & OFF), 239 Albert Street, North Plainfield, NJ 07063. Officer: Fawwad Mohammad, Chief Executive Manager (Qualifying

Individual), Application Type: New NVO & OFF License.

BK Logistics Corp. (NVO & OFF), 373 Van Ness Avenue, #110, Torrance, CA 90501. Officer: Christine M. Kim, President/VP/Secretary/CFO (Qualifying Individual), Application Type: New NVO & OFF License.

CALS Logistics USA, Inc. (NVO & OFF), 755 N. Route 83, Suite 275, Bensenville, IL 60106. Officers: Mira Lee, Customer Service Officer-Air & Ocean (Qualifying Individual), Bok H. Chua, President, Application Type: QI Change.

Cargo Celeste Logistics LLC (NVO & OFF), 205 Branch Valley Way, Dallas, GA 30132. Officer: Jennifer C. Galan, President (Qualifying Individual), Application Type: New NVO & OFF License.

Core Freight Inc. (NVO), 21–03 124th Street, College Point, NY 11356. Officer: Hsin H. Chen, President/Secretary (Qualifying Individual), Application Type: New NVO License.

DTS Advance LLC (NVO & OFF), 38850 Taylor Parkway, North Ridgeville, OH 44039. Officers: Donald B. Hackney, Vice President, Operations (Qualifying Individual), Depeng Tong, Executive Director, Application Type: New NVO & OFF License.

FSI Cargo, Corp. (NVO & OFF), 10025 NW 116th Way, Suite 17, Medley, FL 33178. Officer: Milagros Garcia, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

George Dobovanszky dba Stratus Logistics (NVO & OFF), 320 Pine Avenue, Suite 403, Long Beach, CA 90802. Officer: George Dobovanszky, Sole Proprietor (Qualifying Individual), Application Type: New NVO & OFF License.

Yusen Logistics (Americas) Inc. dba Yusen Logistics dba Double Wing Express (NVO & OFF), 377 Oak Street, Suite 302, Garden City, NJ 11530. Officers: Karen Yvonne Quintana, Vice President (Qualifying Individual), Kazuo Ishizuka, President/CEO, Application Type: Business Structure Change and QI Change.

Dated: March 18, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–6862 Filed 3–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
019297N	Premier Van Lines, Inc., 2208 Harmony Grove Road, Escondido, CA 92029	December 17, 2010.
020826NF	New World Forwarding LLC, 8524 Highway 6 North, Suite 276, Houston, TX 77095	December 14, 2010.
021268F	Scan Global Logistics, Inc., 650 Atlanta South Parkway, Suite 109, Atlanta, GA 30349	January 15, 2011.
021504N	Onward Shipping & Clearing Service Inc., 2305 Oak Lane, Suite 201–B, Grand Prairie, TX 75051	January 10, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–6871 Filed 3–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 2739NF.
Name: Alison Transport Inc.
Address: 1800–A Access Road, Oceanside, NY 11572.
Order Published: FR: 2/25/11 (Volume 76, No. 38, Pg. 10594).

License Number: 019544NF.
Name: Japan Star America, Inc. dba Innex America.
Address: 550 E. Carson Plaza Drive, Suite 109, Carson, CA 90746.
Order Published: FR: 2/25/11 (Volume 76, No. 38, Pg. 10594).

License Number: 020577F.
Name: Bosmak, Inc. dba Ocean Breeze Shipping.
Address: 2501 Harford Road, Baltimore, MD 21218.
Order Published: FR: 2/09/11 (Volume 76, No. 27, Pg. 7210).

License Number: 020600N.
Name: Noel N. Griffith dba Duncan International Shipping.
Address: 1082 Rogers Avenue, Brooklyn, NY 11226.
Order Published: FR: 2/25/11 (Volume 76, No. 38, Pg. 10594).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–6868 Filed 3–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 1580F.
Name: Marco Forwarding Co.
Address: 14204 SW. 62nd Street, Miami, FL 33183.
Date Revoked: February 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 8215N.
Name: Willex Movers Inc.
Address: 724 Whitney Avenue, San Leandro, CA 94577.
Date Revoked: February 4, 2011.
Reason: Failed to maintain a valid bond.

License Number: 13290N.
Name: Argosy Transport, Inc.
Address: 5572 Lutford Circle, Westminster, CA 92683.
Date Revoked: February 25, 2011.
Reason: Surrendered license voluntarily.

License Number: 14638N.
Name: Delahaye Blue Ribbon, Inc.
Address: 51 East 42nd Street, Suite 408, New York, NY 10017.
Date Revoked: February 1, 2011.
Reason: Failed to maintain a valid bond.

License Number: 015590N.
Name: Express Global Freight, Inc.
Address: 20311 Valley Blvd., Walnut, CA 91789.
Date Revoked: February 19, 2011.
Reason: Failed to maintain a valid bond.

License Number: 015847N.
Name: Straightline Logistics, Inc.
Address: One Cross Island Plaza, Suite 210, Rosedale, NY 11422.
Date Revoked: February 13, 2011.
Reason: Failed to maintain a valid bond.

License Number: 017279F.
Name: Unicom Trans, Inc.
Address: 15500 S. Western Avenue, Gardena, CA 90249.
Date Revoked: February 23, 2011.
Reason: Failed to maintain a valid bond.

License Number: 017330N.
Name: Geomarine Shipping Inc.
Address: 27 Cambridge Road, East Rockaway, NY 11518.
Date Revoked: February 20, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018125F.
Name: Echo-Translink Systems (ETS) dba Echo Worldwide.
Address: 14205 SE 36th Street, Suite 100, Bellevue, WA 98006.
Date Revoked: February 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018977N.
Name: Alas Cargo LLC.
Address: 228–236 Star of India Lane, Main Street, Carson, CA 90746.
Date Revoked: February 7, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019156N.
Name: La Primavera Cargo Express Corp.
Address: 1388–92 Jesup Avenue, Bronx, NY 10452.
Date Revoked: February 26, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019277N.
Name: Trans Freight (USA) Inc.
Address: 317 W. Main Street, Unit 419, Alhambra, CA 91801.
Date Revoked: February 21, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019288F.
Name: Kairos Logistics LLC.
Address: 1447 West 178th Street, Suite 305, Gardena, CA 90248.
Date Revoked: February 15, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019897N.
Name: Pinoy Express Cargo, Inc.
Address: 18800 Amar Road, Suite A–7, Walnut, CA 91789.
Date Revoked: February 10, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019908NF.
Name: International Trade Management Group, LLC dba ITM Logistics dba Patriot Lines.
Address: 611 Live Oak Drive, McLean, VA 22101.
Date Revoked: February 21, 2011.
Reason: Failed to maintain valid bonds.

License Number: 020527NF.
Name: Fast Logistics, Inc.
Address: 3350 SW 3rd Avenue, Suite 207, Fort Lauderdale, FL 33315.
Date Revoked: February 28, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021273NF.
Name: Frontcargo Freight Services Inc.
Address: 4729 NW 72nd Avenue, Miami, FL 33166.
Date Revoked: February 12, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021837F.
Name: Cargo America, Inc.
Address: 332 South Wayside Drive, Houston, TX 77011.
Date Revoked: November 10, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021901F.
Name: Magusa Logistics, Corp.
Address: 11222 NW. 53rd Lane, Doral, FL 33178.
Date Revoked: February 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021961N.
Name: Miami Envios Express Inc.
Address: 7468 SW 117th Avenue, Miami, FL 33183.
Date Revoked: February 16, 2011.
Reason: Surrendered license voluntarily.

License Number: 022184F.
Name: Santiago Cargo Express, Corp.
Address: 9–16 37th Avenue, Long Island City, NY 11101.
Date Revoked: February 25, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 2011–6865 Filed 3–22–11; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6029–N]

RIN 0938–AQ99

Medicare, Medicaid, and Children's Health Insurance Programs; Provider Enrollment Application Fee Amount for 2011

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

ACTION: Notice.

SUMMARY: This notice announces the $505 calendar year (CY) 2011 application fee for institutional providers that are: Initially enrolling in the Medicare, program; revalidating their Medicare enrollment; or adding a new Medicare practice location. These institutional providers and suppliers are required to submit the 2011 fee amount with any enrollment applications submitted on or after March 25, 2011 and on or before December 31, 2011. Similarly, beginning March 25, 2011 prospective or re-enrolling Medicaid or CHIP providers must submit the applicable application fee unless: (1) The provider is an individual physician or nonphysician practitioner; or (2) the provider is enrolled in Title XVIII of the Act or another State's title XIX or XXI plan and has paid the application fee to a Medicare contractor or another State.

DATES: *Effective Date:* This notice is effective on March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302 for Medicare enrollment issues. Claudia Simonson, (312) 353–2115 for Medicaid and CHIP enrollment issues.

SUPPLEMENTARY INFORMATION:

I. Background

In the February 2, 2011 **Federal Register** (76 FR 5862) we published a final rule with comment period entitled: "Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers". This final rule with comment finalized, among other things, provisions related to the submission of application fees as part of the Medicare, Medicaid and Children's Health Insurance Program (CHIP) provider enrollment processes. Specifically, and as stated in 42 CFR 424.514, institutional providers and suppliers that are: Initially enrolling in

the Medicare program; revalidating their Medicare enrollment; or adding a new Medicare practice location, will be required to submit an application fee beginning March 25, 2011 with any enrollment application. We will adjust the amount of the fee annually for inflation. Institutional providers are defined at § 424.502 as—

> Any provider or supplier that submits a paper Medicare enrollment application using the CMS–855A, CMS–855B (not including physician and non-physician practitioner organizations), CMS–855S or associated Internet-based PECOS enrollment application.

Similarly, as stated in 42 CFR 455.460, beginning March 25, 2011 prospective or re-enrolling Medicaid or CHIP providers must submit the applicable application fee unless: (1) The provider is an individual physician or nonphysician practitioner; or (2) the provider is enrolled in Title XVIII of the Act or another State's title XIX or XXI plan and has paid the application fee to a Medicare contractor or another State.

The February 2, 2011 final rule with comment period contains additional information about the entities that must submit an application fee, the purpose of the fee, and the process of obtaining a hardship exception or a waiver for Medicaid providers.

II. Provisions of the Notice

The application fee amount for the period on or after March 25, 2011 and on or before December 31, 2011 will be $505. This figure was calculated in accordance with the following:

- Section 1866(j)(2)(C)(i)(I) of the Social Security Act (the Act) established a $500 application fee for providers and suppliers in calendar year (CY) 2010.
- In 42 CFR 424.514(d)(2) of our regulations, and consistent with section1866(j)(2)(C)(i)(II) of the Act, we stated that for CY 2011 and for subsequent years, the fee will be adjusted by the percentage change in the consumer price index (CPI) for all urban consumers (all items; United States city average) for the 12-month period ending with June of the previous year.
- As stated in the Regulatory Impact Analysis section of the February 2, 2011 final rule with comment period (76 FR 5955) the CPI–U increase for the 12-month period ending with June of the previous year is1.0 percent, based on data obtained from the Bureau of Labor Statistics. This results in an application fee for the CY 2011 of $505 (or, $500 × 1.01).

We will provide additional information to institutional providers on how the application fee can be submitted. Institutional providers are reminded that they can submit a hardship exception request in the event they believe that it is appropriate; additional information on the hardship exception is available in the February 2, 2011 final rule with comment period.

The application fee for calendar year 2012 will be published in the **Federal Register** later this year.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). However, it does reference previously approved information collections. As stated in Section I of this notice, the forms CMS–855(A and B) and the CMS–855(S) are approved under OMB control numbers 0938–0685 and 0938–1057.

IV. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

In the regulatory impact analysis section of the February 2, 2011 published final rule with comment (76 FR 5862), we estimated the total costs for institutional providers and suppliers in application fees for each CYs from 2011 through 2015. For 2011—and based on an application fee of $505—we projected in Tables 11 and 12 (76 FR 5955 through 5956) a total cost of $46,160,030 for Medicare providers and suppliers (or 91,406 providers and suppliers × $505). For Medicaid providers, the estimated total cost for 2011—as indicated in Tables 13 and 14 (76 FR 5957)—was $9,519,755 (or 18,851 providers × $505).

We are retaining these estimates for purposes of this notice. Thus, we project the total cost in application fees for Medicare and Medicaid providers and suppliers in CY 2011 to be $55,679,785.

This notice does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities.

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

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

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

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

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program and Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 16, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–6813 Filed 3–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0277]

Draft Guidance for Industry: Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled "Draft Guidance for Industry: Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." This revised draft guidance replaces the original draft guidance published in the **Federal Register** of June 9, 2010 (75 FR 32791). The original draft guidance was revised to remove potential ambiguities and to address several issues not included in the original draft guidance. This revised draft guidance is intended to help small entities comply with the final rule entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents."

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 23, 2011.

ADDRESSES: The draft guidance for industry entitled "Draft Guidance for Industry: Compliance with Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" is available on the Internet at *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm,* or a paper copy may be ordered free of charge by calling 1–877–287–1373.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Office of Compliance and Enforcement, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *ctpcompliance@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31; 123 Stat. 1776) was enacted on June 22, 2009, amending the Federal Food, Drug, and Cosmetic Act and providing FDA with the authority to regulate tobacco products. Section 102 of the Tobacco Control Act requires FDA to publish final regulations regarding cigarettes and smokeless tobacco, which are identical in their provisions to the regulations issued by FDA on August 28, 1996 (61 FR 44396), with certain specified exceptions. In the **Federal Register** of March 19, 2010 (75 FR 13225), FDA published a final rule entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." The final regulations apply to manufacturers, distributors, and retailers who make, distribute, or sell cigarettes or smokeless tobacco products.

As of June 22, 2010, these Federal regulations, among other things, prohibit retailers from selling cigarettes, cigarette tobacco, or smokeless tobacco to persons under the age of 18, and require retailers to verify the age of all customers under the age of 27 by checking a photographic identification that includes the bearer's date of birth.

FDA announced the publication of the original draft guidance document on June 9, 2010 (75 FR 32791). This revised draft guidance replaces the original draft guidance. The original draft guidance was revised to remove potential ambiguities and to address several issues not included in the original draft guidance. This revised draft guidance is intended to help small entities comply with the final rule entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" published on March 19, 2010. FDA is soliciting comments on the revised draft guidance document which replaces the original draft guidance document. FDA may amend the guidance document periodically as a result of comments received.

II. Significance of Guidance

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on "Compliance with Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.*

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6794 Filed 3–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0091]

Draft Guidance for Industry: Testing for Salmonella Species in Human Foods and Direct-Human-Contact Animal Foods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Testing for *Salmonella* Species in Human Foods and Direct-Human-Contact Animal Foods." The draft guidance, when finalized, is intended for firms that manufacture, process, pack, or hold human foods or direct-human-contact animal foods intended for distribution to consumers, institutions, or food processors. The draft guidance does not apply to egg producers and other persons who are covered by FDA's final rule "Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation." The draft guidance addresses testing procedures for *Salmonella* species (spp.) in human foods (except shell eggs) and direct-human-contact animal foods, and the interpretation of test results, when the presence of *Salmonella* spp. in the food may render the food injurious to human health.

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115 (g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments concerning the draft guidance by June 21, 2011.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740,301–436–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Testing for *Salmonella* Species in Human Foods and Direct-Human-Contact Animal Foods." The draft guidance, when finalized, is intended for firms that manufacture, process, pack, or hold human foods or direct-human-contact animal foods intended for distribution to consumers, institutions, or food processors. The draft guidance does not apply to egg producers and other persons who are covered by FDA's final rule "Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation" (21 CFR part 118; the shell egg final rule). The draft guidance addresses testing procedures for *Salmonella* spp. in human foods (except shell eggs) and direct-human-contact animal foods, and the interpretation of test results, when the presence of *Salmonella* spp. in the food may render the food injurious to human health. FDA intends to issue a separate guidance document responding to questions FDA has received on the shell egg final rule since its publication and include in that document guidance on environmental and egg testing for *Salmonella* Enteritidis.

Salmonella spp. can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Healthy persons infected with *Salmonella* spp. often experience fever, diarrhea (which may be bloody), nausea, vomiting, and abdominal pain. In rare circumstances, infection with *Salmonella* spp. can result in the organism getting into the blood stream and producing more severe illnesses such as arterial infections (i.e., infected aneurysms), endocarditis, and arthritis. In addition, direct-human-contact animal foods contaminated with *Salmonella* spp. pose a significant health risk to humans who have direct contact with the foods at homes, petting zoos, agricultural fairs, or similar venues.

The draft guidance represents the Agency's current thinking on testing for *Salmonella* spp. in human foods and direct-human-contact animal foods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Always access an FDA guidance document by using the Web sites listed previously to find the most current version of the guidance.

Dated: March 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6793 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0028]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the special controls guidance entitled "Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System." This guidance document describes a means by which the ovarian adnexal mass assessment score test system may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify these device types into class II (special controls). This

guidance document is immediately in effect as the special control for the ovarian adnexal mass assessment score test system, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Donna Roscoe, Center for Devices and Radiological Health, Food and Drug Administration, Bldg., 66, rm. 5540, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6183; or

Marina Kondratovich, Center for Devices and Radiological Health, Food and Drug Administration, Bldg.66, rm. 5666, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6036.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule codifying the classification of the ovarian adnexal mass assessment score test system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the ovarian adnexal mass assessment score test system. Section 513(f)(2) of the FD&C Act provides that any person who submits a premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the FD&C Act, request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Under this authority, on September 11, 2009, FDA by order classified into class II, subject to this special control guidance document, the ovarian adnexal mass assessment score test system. Because of the timeframes established by section 513(f)(2) of the FD&C Act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the ovarian adnexal mass assessment score test system. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive "Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1707 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078.

FDA concludes that labeling provisions for the Black Box Restrictions of this guidance are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the black box warning on all labeling, advertising, and promotional materials for ovarian adnexal mass assessment score test system devices is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public." (*see* 5 CFR 1320.3(c)(2)).

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6622 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Risk Communication 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: Risk Communication 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 5, 2011, from 8 a.m. to 5 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, Conference Room, rm. 1066, Rockville, MD 20857.

Contact Person: Lee L. Zwanziger, Office of Policy, Planning and Budget, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3278, Silver Spring, MD 20993–0002, 301–796–9151, FAX: 301–847–8611, e-mail: *RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 5, 2011, the committee will hear and discuss developments in FDA's ongoing communications programs. The discussion will focus on the use of different channels for information dissemination, tracking how information is gathered and spread, and thoughts on reaching less accessible target audiences.

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 29, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 5, 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 21, 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 22, 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 Lee L. Zwanziger 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 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–6788 Filed 3–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Memorandum of Agreement Between the Indian Health Service and the Department of Interior; Bureau of Indian Affairs and Bureau of Indian Education

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) is providing notice of a Memorandum of Agreement (MOA) between the IHS and the Department of the Interior (DOI), signed in 2009, and has developed an amendment to that MOA that includes language consistent with Section 703 of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended. The purpose of the MOA and the amendment is to advance our partnership with Tribes and Federal stakeholders on alcohol and substance abuse prevention and treatment. The Patient Protection and Affordable Care Act's, Public Law 111–148, permanent authorization of the Indian Health Care Improvement Act (IHCIA) establishes timelines and requirements for coordinated actions by the Department of Interior (DOI), the Department of Health and Human Services (HHS), Tribes and Tribal organizations. Specifically, Section 703 of the IHCIA provides new authorities that permit the DOI and HHS, acting through the Indian Health Service (IHS), to develop and enter into a Memorandum of Agreement (MOA), or review and update any existing memoranda of agreement, as required by Section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C.2411). DOI and IHS signed an MOA on this topic in 2009, and have developed an amendment to that MOA that includes language consistent with the new IHCIA provision. In accordance with Section 703 of the IHCIA, which states that the MOA between the IHS and DOI shall be published in the **Federal Register**, the agency is publishing notice of this MOA and the amendment to this MOA.

DATES: The original MOA was effective on December 12, 2009. The amendment is effective March 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Rose Weahkee, Director, Division of Behavioral Health, Office of Clinical and Preventive Services, Indian Health Service, 801 Thompson Avenue, Rockville, MD 20852, (301) 443–2038.

SUPPLEMENTARY INFORMATION: In accordance with Section 703 of the Indian Health Care Improvement Act (IHCIA), Public Law No. 94–437, as amended, which states that the MOA between the IHS and DOI shall be published in the **Federal Register**, the agency is publishing notice of this MOA and the amendment to this MOA.

Dated: March 17, 2011.

Yvette Roubideaux,

Director, Indian Health Service.

3–CPS–10–0011

OCTOBER 2009

MEMORANDUM OF AGREEMENT

BETWEEN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

AND

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

AND

BUREAU OF INDIAN EDUCATION

ON

INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION

I. *PURPOSE*

The Memorandum of Agreement (MOA) emphasizes assisting tribal governments in their efforts to address substance abuse. It affirms the importance of a systematic approach to enhance the quality of life. This MOA shall include coordination of data collection, resources, and programs of the Indian Health Service (IHS), the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE).

The Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) shall coordinate and collaborate pursuant to this MOA. Special acknowledgment is given to the rights of tribes in accordance with Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.) and local control in accordance with Section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

The tribes, in conjunction with Federal and state entities, will identify the need for services and their best applications.

II. *GOAL*

To promote tribal communities that are safe, healthy, and productive by the following means:

- Increase collaboration and coordination among the BIA, BIE, IHS, and tribes.
- Facilitate resource sharing (funding, personnel, information, knowledge, and skills) among the BIA, the BIE, IHS, and tribes.
- Support and assist local BIA agencies, schools, BIE line offices, and IHS area and service units in working with tribes in developing and implementing joint programs and services.

III. *BACKGROUND*

Substance abuse, including alcohol, illegal drugs, and controlled substances, impact the whole community. Probable consequences include depression, domestic violence, child neglect and abuse, elderly abuse, property damage, gang activity, and violent crime. It increases the burden on communities and on those Federal, state, and tribal governments attempting to assist these communities.

The production, distribution, and use of substances such as methamphetamine (meth) are not a new problem. Substance abuse threatens not only the user but threatens the well-being of the community. Related illicit acts encourage gang activities as well as organized crime on Indian lands. The production of meth results in toxic by-products that are left in buildings, fields, and waterways. Some of these chemicals can cause disfigurement, illness, or death.

American Indian youth, ages 12–17, have the highest percentage rate for illegal drug use according to the Substance Abuse and Mental Health Services Administration (SAMHSA). Prevention efforts targeting youth and young adults are the most cost-effective in addressing this problem. It has been clearly demonstrated that the younger an individual is when he/she encounters a prevention message, the better the outcome.

Illegal drugs and controlled substances present a special challenge to agencies and organizations. Supply reduction, in combination with demand reduction, must be undertaken through a comprehensive and multi-disciplinary approach if they are to be successful. The illegal production, distribution, and use of controlled substances within Indian Country is at an epidemic level. These challenges necessitate a comprehensive evaluation by the BIA, BIE, and IHS in order to address these issues.

IV. *STATEMENT OF PURPOSE*

A. Coordination Efforts

1. Juvenile and Adult Detention Centers

The IHS and BIA will collaborate to expand substance abuse resources for detoxification, treatment, and post-detention community re-entry and aftercare planning.

2. Youth Regional Treatment Centers (YRTC)

The IHS will continue to provide funding support for the operation of existing centers and to advocate for additional resources. The IHS will include BIE in the planning and identification of educational resources (curriculum, libraries, recreational facilities, computers, funds for teachers, etc.) for IHS-operated YRTC's. The BIE will be active in considering the needs of tribally-operated YRTC's. The BIE and IHS will collaborate regarding the most suitable placement to meet the needs of the individuals.

3. Residential Schools

The IHS, BIA and BIE will coordinate delivery of healthcare and wellness support services to boarding school residents and their families. The agencies will support efforts to align policies such that residents have appropriate access to healthcare services including a range of behavioral health services on-site. Such services will, where possible, be part of an integrated, holistic approach to student support that includes appropriate recognition and targeting of interventions to both general student populations and high risk students.

4. Community Based Adult Services

The IHS, BIA, and BIE will collaborate with tribes to enhance program coordination, planning, and implementation of community based prevention, referral, enforcement, treatment (both individual and family), recovery models, and implementation of programs with linkages to adjunct community services. These efforts will be implemented at the BIA agency, BIE line office, and IHS service unit levels jointly with the affected tribes.

5. Child Protection and Child Welfare

The BIA will include the BIE, IHS, and tribes in planning and implementation activities. These shall include defining the scope of services appropriate to tribal area needs and identifying resources to address the continuum of

care for American Indian children at risk for abuse and/or neglect.

The BIA, BIE, and the IHS will obtain input from local tribes on planning initiatives. This will strengthen the coordinated interagency multidisciplinary response for the protection of children and the prevention of child abuse and neglect in American Indian and Alaska Native communities, especially for drug endangered children. These agencies will continually reaffirm the need for coordinated approaches to prevent child abuse and neglect and its long-term social and economic consequences (poor academic performance, substance use, multiple disorders, suicides, etc.) and promote a full range of effective services for abused American Indian and Alaska Native children and their families.

6. Data Collection, Analysis, and Sharing

The BIA, BIE, and IHS will consult with the tribes to determine the need for sharing information, data collection systems that are compatible with current systems in use, and data resources on substance abuse and collaboration and coordination on information collection and reporting will be encouraged. Linkages will be forged with other Federal, state, and local entities. This will facilitate appropriate recommendations and decisions about programs and initiatives.

7. Joint Multi-Disciplinary Meetings

The BIA and BIE Central Offices and IHS Headquarters staff, including participation by regional, line, and area office staff, will jointly conduct multidisciplinary meetings to discuss coordination and collaboration issues and identify barriers to the implementation of this MOA. These meetings will occur not less than every 6 months.

In addition, an annual, multidisciplinary meeting will be planned and coordinated that focuses on local BIA agency superintendents and BIE line officers (including superintendents or education specialists, IHS service unit chief executive officers, and tribal health directors and facility directors). It will address organizational coordination and effective responses to the impact of substance abuse in Indian Country.

B. Organizational Responsibility

1. Central Office/Headquarters

The BIA and BIE Central Office and IHS Headquarters are responsible for:

- Designing and delivering training and technical assistance;
- Identifying and advocating for financial resources; and
- Developing a biennial program plan, including specific objectives, performance improvement measures, benchmarks/milestones, and organizational responsibilities to be completed within 6 months of the last signature of this MOA.

2. BIA Regions, BIE Line Offices, and IHS Area Offices

The BIA regional directors, BIE line officers, and IHS area directors are responsible for encouraging the development of local MOA's between the IHS, BIA, and BIE in working with the local tribe(s) to increase collaboration and cooperation, facilitate resource sharing, and to develop joint programs/services to address substance abuse.

The BIA regional directors, BIE line officers, and IHS area directors are responsible for designating a staff member to attend the semi-annual organizational planning and implementation meetings (see item IV.A.7) and report activities (accomplished, ongoing, and unaccomplished) to BIA and BIE Central Offices and IHS Headquarters.

The BIA Central Office will compile a comprehensive list of Indian Country activities (accomplished, ongoing, and unaccomplished) semiannually for distribution to all BIA regions and agencies (through the Deputy Bureau Director for Field Operations), BIE line offices (through the BIE Deputy Director, School Operations), and IHS service unit chief executive officers (through the IHS Director).

V. *IDENTIFICATION OF STATUTORY AUTHORITIES*

1. Snyder Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13)
2. Economy Act of September 13, 1982 (96 Stat. 933; 31 U.S.C. 1535)
3. Indian Self-Determination and Education Assistance Act of January 4, 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.)
4. Anti-Drug Abuse Act of 1988 (102 Stat. 4181; 21 U.S.C. 1501)
5. Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (100 Stat. 3207–137; 25 U.S.C. 2401)
6. Indian Health Care Improvement Act of September 30, 1976 (90 Stat. 1400; 25 U.S.C. 1600 et seq.)
7. Indian Child Protection and Family Violence Prevention Act of November 28, 1990 (104 Stat. 4544; 25 U.S.C. 3201)
8. No Child Left Behind Act of 2001 (115 Stat. 1425; 20 U.S.C. 6301)
9. Johnson-O'Malley Act of April 16, 1934, (48 Stat. 596; 25 U.S.C. 452 et seq.)
10. Victims of Child Abuse Act of November 29, 1990 (104 Stat. 4792; 42 U.S.C. 13001 et seq.)
11. Education Amendments of November 1, 1978 (92 Stat. 2143; 25 U.S.C. 2010 et seq.)

VI. *ADMINISTRATIVE PROVISIONS*

1. Nothing in this MOA may be construed to obligate BIA, BIE, IHS, or the United States to any current or future expenditures of resources in advance of the availability of appropriations from Congress. This MOA does not obligate BIA, BIE, IHS, or the United States to spend funds on any particular project or purpose, even if funds are available.
2. This MOA in no way restricts BIA, BIE, or IHS from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
3. BIA, BIE, and IHS will comply with the Federal Advisory Committee Act to the extent it applies.
4. Upon the last signature, this MOA shall remain in effect, unless modified or terminated by the Assistant Secretary—Indian Affairs or the Director, Indian Health Service upon 60 days written notice. The Assistant Secretary—Indian Affairs, Director, BIA, Director, BIE, and Director, IHS shall review this MOA on a biennial basis.

VII. *SIGNATURES OF EACH PARTY*

Approved and accepted by:

/Larry Echohawk/ Assistant Secretary—Indian Affairs	10/13/09 Date
/Yvette Roubideaux/ Director, Indian Health Service	12/16/09 Date
/Spike Bighorn/ (Acting) Director, Bureau of Indian Education	10/15/09 Date
/Jerry Gidner/ Director, Bureau of Indian Affairs	10/20/09 Date

Amendment to Memorandum of Agreement

between

Department of Health and Human Services

Indian Health Service

and

The Department of the Interior

Bureau of Indian Affairs and Bureau of Indian Education

on

Indian Alcohol and Substance Abuse Prevention

PURPOSE

Pursuant to the Patient Protection and Affordable Care Act, Pub. L. No. 111–148, Title X, Subtitle B, Part III, § 10221(a), 124 Stat. 119, 935 (amending 25 U.S.C. §§ 1665, 1665a, and 2411), this amendment updates the "October 2009 Memorandum of Agreement (MOA) between the Department of Health and Human Services (DHHS) Indian Health Service (IHS) and the Department of the Interior (DOI) Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) on Indian Alcohol and Substance Abuse Prevention."

AMENDMENTS

The October 2009 MOA is amended, as follows:

(1) The first sentence of **SECTION I** is amended to read:

I. *PURPOSE*

The Memorandum of Agreement (MOA) emphasizes assisting tribal governments in their efforts to address certain behavioral health issues among Indians, specifically mental illness and dysfunctional and self-destructive behavior, including substance abuse, child abuse, and family violence.

(2) **Section IV A.** is amended to read as follows:

2. Youth Regional Treatment Centers (YRTC)

The IHS will continue to provide funding support for the operation of existing centers and the implementation within the centers of alcohol and substance abuse treatment programs. IHS will also advocate for additional resources. The BIE will provide resources and funding for the education of the young people receiving treatment in the YRTCs (curriculum, libraries, recreational facilities, computers, funds for teachers, etc.), and will actively identify and seek funding and resources available from the states and other entities. IHS and BIE will work collaboratively to meet the needs of the YRTC residents.

(3) A new paragraph is added to **Section IV A. Coordination Efforts:**

8. Certain Behavioral Health Issues

IHS, BIA, and BIE will collaborate to:

(a) Assess the scope and nature of mental illness and dysfunctional and self-destructive behavior, including substance abuse, child abuse, and family violence, among Indians;

(b) Identify existing Federal, tribal, State, local, and private services, resources, and programs available to provide behavioral health services for Indians;

(c) Determine the unmet need for additional services, resources, and programs necessary to improve the mental and behavioral health of Indians;

(d) Support the right of Indians, as citizens of the United States and of the States in which they reside, to have access to behavioral health services to which all citizens have access;

(e) Delineate the responsibilities of IHS and BIA, including mental illness identification, prevention, education, referral, and treatment services (including services through multidisciplinary resource teams), at the central, area, and agency and service unit, service area, and headquarters levels;

(f) Develop a strategy for the comprehensive coordination of behavioral health services provided by IHS and BIA, including:

(i) the coordination of alcohol and substance abuse programs of IHS, BIA, and Indian tribes and tribal organizations developed under the Indian Alcohol and Substance Abuse Prevention and Treatment Act with behavioral health initiatives, particularly with respect to the referral and treatment of dually diagnosed individuals requiring behavioral health and substance abuse treatment, and;

(ii) ensuring that IHS and BIA programs and services (including multidisciplinary resource teams) addressing child abuse and family violence are coordinated with such non-Federal programs and services.

(g) Direct appropriate officials, particularly at the agency and service unit levels of BIA and IHS, to cooperate fully with tribal requests made pursuant to community behavioral health plans adopted under section 702(c) [25 U.S.C. § 1665a(c)] and section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act.

(4) A new paragraph is added to **Section IV B. Organizational Responsibility:**

3. IHS shall assume responsibility for:

(a) the determination of the scope of the problem of alcohol and substance abuse among Indians, including the number of Indians within the jurisdiction of the Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost;

(b) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and;

(c) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

(5) A new paragraph is added to **Section VI ADMINISTRATIVE PROVISIONS:**

5. The Secretaries of DHHS and DOI will conduct an annual review of this MOA which will be provided to Congress and Indian tribes and tribal organizations.

(6) Paragraph (4) in **Section VI** is amended to read:

4. Upon the last signature, this MOA shall remain in effect, unless modified or terminated by the Assistant Secretary—Indian Affairs or the Director, Indian Health Service or the Director, Bureau of Indian Education, or the Director, Bureau of Indian Affairs, upon 60 days' written notice.

(7) **Section V** is amended to read:

6. Indian Health Care Improvement Act of September 30, 1976 (90 Stat. 1400; 25 U.S.C. 1600 et seq.) as amended by Patient Protection and Affordable Care Act, Pub. L. No. 111–148, Title X, Subtitle B, Part III, § 10221(a), 124 Stat. 119, 935 (amending 25 U.S.C. §§ 1665, 1665a, 2411).

Signatures of Each Party

/Yvette Roubideaux/

Director, Indian Health Service
Department of Health and Human Services
Date: March 1, 2011

/Larry Echohawk/

Assistant Secretary—Indian Affairs
Department of the Interior
Date: March 1, 2011

[FR Doc. 2011–6826 Filed 3–22–11; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended because the premature disclosure of journals as potential titles to be indexed by the National Library of Medicine and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 23–24, 2011.

Open: June 23, 2011, 9 a.m. to 11 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 23, 2011, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 24, 2011, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W06, Bethesda, MD 20892, 301–496–6921, *kotzins@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6864 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SPORE in Lymphoma, Breast, Ovarian, Genitourinary and Gastrointestinal Cancers.

Date: June 9–10, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Caron A Lyman, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6863 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathogenesis and Immunity in HIV/AIDS.

Date: April 6, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A Prasad, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel;

PAR–Biophysical and Biomechanical Aspects of Embryonic Development.

Date: April 13, 2011.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott San Francisco Union Square, 500 Post Street, San Francisco, CA 95102.

Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6861 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Xenobiotics Disposition and Renal Physiology and Pathophysiology.

Date: April 14, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NR–11–002: NIH Basic Behavioral and Social Science Opportunity Network.

Date: April 20–21, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6860 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Loan Repayment Program 2011.

Date: April 30, 2011.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: JoAnn McConnell, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–5324, *mcconnej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6858 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 11, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: May 11, 2011.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: May 11, 2011.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: May 11, 2011.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6874 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Loan Repayment Program.

Date: April 18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6873 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; SBIR Contract Proposals.

Date: April 5, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–6866 Filed 3–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0171]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Committee Establishment.

SUMMARY: The Secretary of Homeland Security has determined that the establishment of the Merchant Marine Personnel Advisory Committee (MERPAC) is necessary and in the public interest in connection with the performance of duties of the U. S. Coast Guard.

Name of Committee: Merchant Marine Personnel Advisory Committee.

ADDRESSES: If you desire to submit comments on this action, they must be submitted by April 22, 2011. Comments must be identified by (USCG–2011–0171) and may be submitted by using one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on the establishment of the MERPAC, call or e-mail Mark C. Gould, Commandant (CG–5221), Attention MERPAC, U.S. Coast Guard, 2100 Second St., SW., STOP 7126, Washington, DC 20593–7126; *e-mail: mark.c.gould@uscg.mil; fax:* (202) 372–1926. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2011–0171), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notice" and insert "USCG–2011–0171" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0171" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Establishment of the Committee

For the reasons set forth below, the Secretary of Homeland Security has determined that the establishment of the MERPAC is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The MERPAC is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. (Pub. L. 92–463). The MERPAC will act in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The MERPAC will provide focused recommendations to relevant maritime personnel issues and we anticipate that it will be very responsive to the Coast Guard's need for recommendations on short turn-around issues. The Committee's unique industry perspective will provide critical support to the Coast Guard's efforts to ensure the safety of the U.S. merchant marine. This information would otherwise have to be drawn from the broad population involved in merchant vessel personnel matters. There is no other current entity which can provide the level of technical expertise and experience that is afforded by this advisory committee.

Balanced Membership Plans

The Committee membership is mandated by its charter and consists of nineteen (19) members appointed by the Secretary of Homeland Security as follows: a. Nine active U.S. Merchant

Mariners including: (1) Three deck officers who represent the viewpoint of merchant marine deck officers, two of whom shall be licensed for oceans any gross tons, one of whom shall be licensed for inland or river route with a limited or unlimited tonnage, two of whom must have master's license or a master of towing vessels license, and one of whom must have significant tanker experience; and, to the extent practicable, one of these deck officers shall represent the point of view of labor and another shall represent a management perspective; (2) three engineering officers who represent the viewpoint of merchant marine engineering officers, two of whom shall be licensed as chief engineer any horsepower, one of whom shall be licensed as either a limited chief engineer or a designated duty engineer; and, to the extent practicable, one of these engineers shall represent a labor point of view and another shall represent a management perspective; (3) two unlicensed seamen, including one who represents the viewpoint of Able-Bodied Seamen and one who represents the viewpoint of Qualified Members of the Engine Department; and (4) one Pilot who represents the viewpoint of merchant marine pilots. b. Six Marine Educators, including: (1) Three who represent the viewpoint of Maritime Academies, two of whom shall represent State Maritime Academies, and one of whom may represent either the State Maritime Academies or the Federal Maritime Academy; and (2) three who represent the viewpoint of other maritime training institutions, one of whom shall represent the viewpoint of the small vessel industry. c. Two individuals who represent the viewpoint of shipping companies employed in ship operation management. d. Two members who are drawn from the general public.

Duration: Continuing.

Responsible DHS Officials: MERPAC will provide advice and recommendations to the Secretary of the Department of Homeland Security through the Director of Commercial Regulations and Standards, United States Coast Guard and the Commandant of the Coast Guard.

Dated: March 17, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2011–6885 Filed 3–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: E-Verify Program Data Collection; OMB Control No. 1615—New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2010, at 75 FR 81631, allowing for a 60-day public comment period. USCIS received three comments for this information collection. USCIS received 3 comments for this information collection. A discussion of the comments and USCIS' responses are discussed in item 8 of the supporting statement that can be viewed at: *http://www.regulations.gov.*

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 22, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, 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,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add E-Verify Program Data Collection in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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:* New information collection.

(2) *Title of the Form/Collection:* E-Verify Program Data Collection.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The E-Verify Data Collection is necessary in order for U.S. Citizenship and Immigration Services (USCIS) to obtain data from employers regarding the E-Verify Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 900 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 450 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: March 17, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–6780 Filed 3–22–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: HRIFA Instructions for Form I–485, Supplement C; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; HRIFA Instructions for Form I–485, Supplement C; OMB Control No. 1615–0024.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 23, 2011.

During this 60 day period, USCIS will be evaluating whether to revise Form I–485, Supplement C. Should USCIS decide to revise Form I–485, Supplement C 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–485, Supplement C.

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, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0024 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form I–485, Supplement C. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies 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:* HRIFA Instructions for Form I–485, Supplement C.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485, Supplement C; 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 the Form I–485 Supplement C, in combination with the information collected on Form I–485 (Application to Register Permanent Resident or Adjust Status), is necessary in order for the U.S. Citizenship and Immigration Services (USCIS) to make a determination that the adjustment of status eligibility requirements and conditions are met by the applicant of Haitian nationality pursuant to HRIFA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,000 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., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: March 17, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–6781 Filed 3–22–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of information collection under review: Civics and Citizenship Toolkit/Teacher Training Registration; OMB Control No. 1615–New.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 21, 2011, at 76 FR 3920, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 22, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, 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,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When

submitting comments by e-mail please make sure to add Civics and Citizenship Toolkit/Teacher Training Registration in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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:* New information collection.

(2) *Title of the Form/Collection:* Civics and Citizenship Toolkit/Teacher Training Registration.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number; File No. OMB–58. 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.* This information collection is necessary to register for training and to obtain a toolkit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Citizenship Toolkit: 7,000 responses at 10 minutes (.166 hours) per response. Teacher Training Registration: 1,100 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,344 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, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: March 17, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–6782 Filed 3–22–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–01]

Notice of Proposed Information Collection for Public Comment Choice Neighborhoods

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Department is soliciting public comments on the subject proposal, to assure better understanding of the reporting requirements and consistency in the submission of data.

DATES: *Comments Due Date:* May 23, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Choice Neighborhood.

OMB Control Number: 2577–0269.

Description of Information Collection: This is a revised information collection. The Department of Housing and Urban Development Appropriations Act, 2010 (Pub. L. 111–117, enacted on December 16, 2009) permits the HUD Secretary to use up to $65,000,000 of the HOPE VI appropriations for a Choice Neighborhoods Initiative demonstration. Thus, except as otherwise specified in the appropriations act, the HOPE VI program requirements and selection criteria will apply to Choice Neighborhoods grants for FY 2011. The Notice of Funding Availability (NOFA) will contain the selection criteria for awarding Choice Neighborhoods grants and specific requirements that will apply to selected grantees.

The program aims to transform neighborhoods of poverty into viable mixed-income neighborhoods with access to economic opportunities by revitalizing severely distressed public and assisted housing and investing and leveraging investments in well-functioning services, effective schools and education programs, public assets, public transportation and improved access to jobs. Choice Neighborhoods grants will primarily fund the transformation of public and/or HUD-assisted housing developments through preservation, rehabilitation, and

management improvements as well as demolition and new construction. In addition, these funds can be used on a limited basis (and combined with other funding) for improvements to the surrounding community, public services, facilities, assets and supportive services. Choice Neighborhoods grant funds are intended to catalyze other investments that will be directed toward necessary community improvements. The leveraging of other sources will be necessary to address other key neighborhood assets and achieve the program's core goals. HUD is working with other Federal agencies to integrate Choice Neighborhoods with other Federal place-based programs.

Agency Form Number: Pending.

Members of Affected Public: Local governments, public housing authorities, nonprofits, and for-project developers that apply jointly with a public entity.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: For Choice Neighborhoods burden hours per response total to 68.09 for Implementation Grant applications and 34.59 for Planning Grant applications. The total burden hours, estimating 150 respondents for both application is 6,864.

Status of the proposed information collection: This is a new information Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 15, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2011–6764 Filed 3–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5498–N–01]

Reallocation of American Recovery and Reinvestment Act Capital Funds—Capital Fund Grant Program Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (the Recovery Act) included a $4 billion appropriation of Capital Funds for public housing agencies (PHAs) to carry out capital and management activities, as authorized under section 9 of the United States Housing Act of 1937 (the 1937 Act). The Recovery Act required that $3 billion of these funds be distributed as formula funds and the remaining $1 billion be distributed through a competitive process. HUD obligated approximately $2.985 million in formula funds to PHAs on March 18, 2009. On May 7, 2009, HUD posted on its Web site its Notice of Funding Availability (NOFA), which launched the competitive distribution of Capital Funds. In September 2009, HUD announced the award of $995 million in Capital Fund Recovery Competition (CFRC) Grants. In accordance with the Recovery Act, HUD was required to reallocate any Recovery Act Capital Funds that were returned prior to the initial obligation deadline and/or recaptured.

After award, a number of grantees were subsequently unable to meet the NOFA and Recovery Act criteria and approximately $14 million in CFRC funds were recaptured. Additionally, another $3.2 million in Capital Fund Recovery Grant (CFRG) funds that were unable to meet the obligation deadline were recaptured. Since the Act required that HUD redistribute any grant funds that were not in compliance, $17,161,649.00 was awarded to pending Recovery Act PHA applicants who had applied for funding under Category 4, Option 2 of the NOFA *Creation of Energy Efficient, Green Communities,* consistent with the Department's objective of promoting energy efficiency. This notice announces the grantees that received the reallocated funds.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–400, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through the TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The NOFA for HUD's CFRC Grants program made available $995 million to PHAs for capital and management activities as authorized under section 9 of the 1937 Act in accordance with four funding categories: (1) Improvements addressing the needs of the elderly and/or persons with disabilities; (2) public housing transformation; (3) gap financing for projects that are stalled due to financing issues; and (4) creation of energy efficient, green communities.

In accordance with the Recovery Act (Pub. L. 111–5, approved February 17, 2009), PHAs had to give priority to capital projects that could award contracts based on bids within 120 days from the date the funds were made available to the PHAs and had to prioritize capital projects that were already underway or included in the 5-year Capital Fund plans required by the 1937 Act. Additionally, funds had to supplement and not supplant expenditures from other Federal, State, or local sources or funds independently generated by the grantee. Finally, the Recovery Act provided for alternate obligation and expenditure deadlines (and penalties) as follows:

(1) HUD must obligate the CFRC grant funding to grantees by September 30, 2009.

(2) PHAs must obligate 100 percent of the grant funds awarded under this NOFA within 1 year of the date on which funds become available to the PHA for obligation (which is the effective date of the Annual Contributions Contract (ACC) amendment). If a PHA fails to comply with the 1-year obligation requirement, the Recovery Act required HUD to recapture all remaining unobligated funds awarded to the PHA, and to reallocate the recaptured funds to PHAs that are in compliance with the Recovery Act's obligation requirement.

(3) PHAs must expend at least 60 percent of the grant funds within 2 years of the date on which funds become available to the PHA for obligation (which is the effective date of the ACC amendment). If a PHA fails to comply with the 2-year expenditure requirement, the Recovery Act required HUD to recapture the balance of the funds awarded to the PHA, and to reallocate the recaptured funds to PHAs that are in compliance with the Recovery Act's 2-year expenditure requirement.

(4) PHAs must expend 100 percent of the grant funds within 3 years of the date on which funds become available to the PHA for obligation (which is the effective date of the ACC amendment). If a PHA fails to comply with the 3-year expenditure requirement, the Recovery Act required HUD to recapture the balance of the funds awarded to the PHA, and to reallocate the recaptured funds to PHAs that are in compliance with the Recovery Act's 3-year expenditure requirement.

Extensions of the obligation deadlines are not permitted under the Recovery Act.

Reallocation

After award, a number of grantees were subsequently unable to meet the Recovery Act and NOFA criteria and their funds were recaptured—$3.2 million in CFRG funds and approximately $14 million in CFRC funds. HUD was required to reallocate funds that were recaptured prior to July 21, 2010. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–2003, approved July 21, 2010) (Dodd-Frank Act) amended the Recovery Act to provide that Recovery Act funds recaptured on or after July 21, 2010, must be returned to the Treasury. (*See* section 1613 of the Dodd-Frank Act.) As a result, $17,161,649.00 was awarded to existing eligible Recovery Act PHA applicants who had applied for funding under Category 4, Option 2 of the NOFA *Creation of Energy Efficient, Green Communities,* consistent with the Department's objective of promoting energy efficiency. The next eligible applications in Category 4, Option 2 that had been scored but had not been funded earlier (because grant funding had been exhausted) were awarded grants as follows:

PHA Name	*Amount*
Cambridge Housing Authority, Cambridge, MA	$2,189,470.00
New York City Housing Authority, New York, NY	650,000.00
Housing Authority of Pleasantville, Pleasantville, NJ	621,000.00
County of Marin Housing Authority, San Raphael, CA	637,500.00
Housing Authority of the City of Columbus, Columbus, GA	1,344,400.00
Housing Authority of the City of Columbus, Columbus, GA	550,000.00
Housing Authority of Charleston, Charleston, SC	1,990,528.00
Rockford Housing Authority, Rockford, IL	2,100,000.00
Rockford Housing Authority, Rockford, IL	1,700,000.00
Housing Authority of Monroe, Monroe, LA	2,635,149.00
Housing Authority of the City of St. Louis, St. Louis, MO	536,102.00
Southern Nevada Regional Housing Agency, Las Vegas, NV	2,207,500.00
Total of Funded Applications	17,161,649.00

Dated: March 11, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–6762 Filed 3–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2011–N007; 40120–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Notice of Availability of a Technical/Agency Draft Recovery Plan for Gentian Pinkroot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for public comment.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the technical/agency draft recovery plan for the endangered gentian pinkroot (*Spigelia gentianoides*). The draft recovery plan includes specific recovery objectives and criteria the species would have to meet in order for us to downlist it to threatened status under the Endangered Species Act of 1973, as amended (Act). We request review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, we must receive comments on the draft recovery plan on or before May 23, 2011.

ADDRESSES: If you wish to review this technical/agency draft recovery plan, you may obtain a copy by contacting Dr. Vivian Negron-Ortiz, U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Ave, Panama City, FL 32405; tel. (850) 769–0552; or by visiting either the Service's recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans* or the Panama City Field Office Web site at *http://www.fws.gov/panamacity/*. If you wish to comment, you may submit your comments by one of the following methods:

1. You may submit written comments and materials to Dr. Negron-Ortiz, at the above address.

2. You may hand-deliver written comments to our Panama City Field Office, at the above address, or fax them to (850) 763–2177.

3. You may send comments by e-mail to *vivian_negronortiz@fws.gov*.

For additional information about submitting comments, *see* the "Request for Public Comments" section below.

FOR FURTHER INFORMATION CONTACT: Dr. Negron-Ortiz at the above addresses or by telephone: (850) 769–0552, ext. 231.

SUPPLEMENTARY INFORMATION:

Background

Spigelia gentianoides was listed as endangered under the Act (16 U.S.C. 1531 *et seq.*) on November 26, 1990 (55 FR 49046). A plant, *S. gentianoides,* comprises two varieties: Var. *gentianoides* is restricted to five locations within three counties in the Florida Panhandle and southern Alabama, and var. *alabamensis* is a narrow endemic limited to the Bibb County Glades in Alabama. The loss or alteration of habitat is thought to be the primary reason for the species' decline. The extant plants of var. *gentianoides* are located in fire-dependent longleaf pine–wiregrass and pine-oak-hickory ecosystems. Much of this habitat has been reduced in its range, converted to pine plantation, and managed without fire. Some of the glades in which var. *alabamensis* is located are owned and protected by The Nature Conservancy. This variety is threatened by potential development of privately owned glades (open, almost treeless areas within woodlands).

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and

estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

Recovery Plan Components

The objective of this plan is to provide a framework for the recovery of gentian pinkroot, so that protection under the Act is no longer necessary. Defining reasonable delisting criteria is not possible at this time given the current low number of populations and individuals, the lack of information about the species' biology, and the magnitude of current threats from development. Therefore, this recovery plan establishes downlisting criteria for *S. gentianoides* so that it may be reclassified to threatened status.

The recovery of *S. gentianoides* is challenging because our knowledge about the species' biology is limited. Therefore, surveying; monitoring; demographic studies; improving management protocols, including the establishment of fire management regimes; and securing extant populations are the most immediate priorities.

Downlisting of *S. gentianoides* from endangered to threatened status will be considered when: (1) Extant populations and newly discovered sites are identified and mapped; (2) inventories on the total number of individuals, number of flowering vs. non-flowering plants, presence of pollinators, and whether seedling recruitment is occurring have been conducted across the species' historic sites and/or on new locations; (3) monitoring programs and management protocols on selected populations (*e.g.,* populations with largest number of individuals) are established for at least 15 years to track threats to the species and habitat (*e.g.,* control exotic species, minimize site disturbance and urban development); (4) the extant populations (including subpopulations at the Ketona Glades, Bibb County, Alabama) located on public land are stable (where fertility and mortality are constant) for at least 15 years; (5) the minimum viable population has been determined for each variety using population viability analyses (PVA); (6) research on key aspects related to demography (*e.g.,* density, effect of fire on seedling establishment), reproductive biology, and seed ecology is accomplished; and (7) viable germplasm representing > 50 percent of the populations for each variety is maintained in *ex situ.* In addition, the following specific actions must be completed for each variety:

Var. *gentianoides:* (1) Sizes of the four largest extant populations are increased via prescribed burns until plant numbers are stabilized over a period of 15 years; (2) at least one new population is found; and (3) at least one population is re-established within the historic range, specifically in the sites where the plants are currently known to be extirpated.

Var. *alabamensis:* Fifty percent of the Bibb County glades known to support the variety on private land are protected through conservation agreements, easements, or land acquisition.

Downlisting criteria will be reevaluated and delisting criteria will be created as new scientific data and information become available and recovery actions are implemented.

Request for Public Comments

We request written comments on the recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 4, 2011.

Mark J. Musaus,

Acting Regional Director, Southeast Region.

[FR Doc. 2011–6638 Filed 3–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N005; 1112–0000–81440–F2]

Endangered and Threatened Wildlife and Plants; Permits, Town of Apple Valley, San Bernardino County, CA; Notice of Intent

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of a public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) regarding an expected application from the Town of Apple Valley, CA, for an incidental take permit (ITP) under the Endangered Species Act of 1973 (Act), as amended. The decision to prepare an EIS or EA will be, in part, contingent upon the complexity of issues identified during and following the scoping phase of the NEPA process. We are furnishing this notice to announce the initiation of a public scoping period, during which we invite other agencies, Tribes, and the public to submit written comments providing suggestions and information on the scope of issues and alternatives to be addressed in the EIS or EA.

DATES: Please send written comments on or before April 22, 2011. We will hold a public scoping meeting Thursday, April 7, from 5:30 p.m. to 7:30 p.m. For the public meeting address, *see* "Meeting," below.

ADDRESSES: *Comments:* Send your comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

Meeting: We will hold a public meeting in the Town Hall Council Chambers, 14955 Dale Evans Parkway, Apple Valley, CA 92307.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator (*see* **ADDRESSES**), *telephone:* (805) 644–1766, extension 224.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact the Service at the address above

no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

In accordance with section 10(a)(2)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the Town of Apple Valley, CA (Town) is preparing a MSHCP in support of an application for a permit from the Service to incidentally take listed species. Section 9 of the Act (16 U.S.C. 1538) and the implementing regulations prohibit the take of animal species listed as endangered or threatened. The term "take" is defined under the ESA (16 U.S.C. 1532) as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such conduct. "Harm" is defined by Service regulation (50 CFR 17.3) to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. For certain circumstances, under Section 10(a)(1)(B) of the ESA we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carry out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17. 22, respectively. If the permit is issued, the Town would receive assurances for all species included on the incidental take permit under the Service's "No Surprises" regulations (50 CFR 17.22 (b)(5) and 17.32 (b)(5)).

Section 10 of the ESA specifies the requirements for the issuance of incidental take permits to non-Federal entities. Any proposed take must be incidental to otherwise lawful activities and cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. The impacts of such take must also be minimized and mitigated to the maximum extent practicable. To obtain an incidental take permit, an applicant must prepare a habitat conservation plan describing the impact that would likely result from the proposed taking, the measures for minimizing and mitigating the take, the funding available to implement such measures, alternatives to the taking, and the reason why such alternatives are not be implemented.

The Applicant is requesting a renewable 30-year permit to incidentally take listed species as a potential result of urban and rural development on approximately 60,500 to 65,300 acres within the Town and its sphere of influence (SOI) (*i.e.,* the probable extent of the physical boundaries and service area of a local governmental agency), which totals approximately 170,000 acres. Of the areas affected, approximately 23,000 to 27,800 acres of development would occur within the Town under the Applicant's General Plan, and approximately 37,500 acres of development would occur within the Town's SOI under San Bernardino County's General Plan. The General Plans are State-mandated plans; each provides a statement of development policies, including diagrams and text that set forth objectives, standards, and plan proposals.

Proposed covered activities would include low-density development (one home per 5 or more acres); mixed-use development (integrating residential, retail, and commercial uses); and industrial development; as well as development of public facilities, mineral resources, street rights of way, and open spaces. The proposed land uses provide for the development of approximately 60,900 housing units within the Town and approximately 21,500 housing units within the SOI, for a total of approximately 82,000 housing units. Potential development also includes: approximately 51.7 and 5.5 million square feet of commercial space in the Town and SOI, respectively; and approximately 58.6 and 53.9 million square feet of industrial space in the Town and SOI, respectively. Covered activities would also include the operation and maintenance of all existing public facilities (approximately 3,200 acres of the ground-disturbance total); all capital improvements of existing and future facilities and roads; construction of new public facilities (approximately 1,400 acres of the ground-disturbance total); and construction, operation, and maintenance of renewable energy projects, including solar energy projects covering up to 5,000 acres, and small-scale wind energy projects.

At present, the applicant is proposing to address seven State and/or Federally listed species and one sensitive species in the MSHCP for coverage under the ITP (*See* Table 1, below). The list of species proposed to be covered in the MSHCP may be modified to include additional threatened or endangered species, and species that may become listed as endangered or threatened during the life of the permit that occur within the project area and may be affected by the covered activities.

The proposed MSHCP will identify actions necessary to conserve the covered species. The proposed minimization measures include incentives for infill development in previously developed/disturbed areas, and measures to control predators of covered species that include reducing access to residential and commercial waste. Proposed mitigation would conserve approximately 75,000 acres of public and private lands through various mechanisms, including purchase of land in fee title and establishment of permanent conservation easements. The Applicant also is considering establishing a non-wasting endowment (where the conservation actions are funded by the interest earned, not the principal) to fund conservation actions on conserved lands in the Desert Wildlife Management Areas.

TABLE 1—SPECIES PROPOSED FOR INCLUSION IN THE TOWN OF APPLE VALLEY'S MSHCP

Common name	Scientific name	Federal status	State status
Birds			
Burrowing owl	*Athene cunicularia*	None	State Species of Concern (SSC).
Least Bell's vireo	*Vireo bellii pusillus*	Endangered	Endangered.
Southwestern willow flycatcher	*Empidonax traillii extimus*	Endangered	Endangered.
Swainson's hawk	*Buteo swainsoni*	None	Threatened.
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Candidate	Endangered.
Mammals			
Mohave ground squirrel	*Xerospermophilus mohavensis*	Under Review	Threatened.

TABLE 1—SPECIES PROPOSED FOR INCLUSION IN THE TOWN OF APPLE VALLEY'S MSHCP—Continued

Common name	Scientific name	Federal status	State status
Reptiles			
Desert tortoise	*Gopherus agassizii*	Threatened	Threatened.
Fish			
Mohave tui chub	*Siphatales bicolor mohavensis*	Endangered	Endangered.

The Applicant, in cooperation with the California Department of Fish and Game (CDFG) and the Service, will develop the MSHCP such that it also meets the State's requirements for a Natural Community Conservation Plan (NCCP). The Applicant will likewise serve as the lead agency for the Environmental Impact Report (EIR), pursuant to Section 15168 of the California Environmental Quality Act (CEQA) Guidelines. Compliance with NEPA and CEQA may be done concurrently in a joint EIS/EIR or EA/Negative Declaration.

Environmental Impact Statement or Environmental Assessment

The EIS or EA will consider the proposed action (issuance of an ITP based on the MSHCP), a no-action alternative (a scenario where there would be no issuance of an ITP and no take of listed species), and a reasonable range of alternatives that fit within the purpose and need of the Service. The general purpose and need of the Service for the proposed action is to respond to an ITP application and to protect, conserve, and enhance fish and wildlife and their habitats for the continuing benefit of the people of California and the United States. A detailed description of the proposed action and alternatives will be included in the EIS or EA. The alternatives for analysis in the document may include, but not be limited to, variations in the covered activities and the footprint of development within the 170,000-acre planning area. It will also identify potentially significant impacts on biological resources, land use, air quality, cultural resources, water resources, socioeconomics, and other resources in the human environment that may occur directly, indirectly, and/or cumulatively as a result of implementing the proposed action or any of the alternatives. Various strategies for avoiding, minimizing, and mitigating the impacts of incidental take also will be considered.

The Service is furnishing this notice in accordance with 40 CFR 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives they believe need to be addressed in the EIS or EA. The primary purpose of the scoping process is to identify important issues raised by the public related to the proposed action. Written comments from interested parties are requested to ensure that the full range of issues related to the proposed action is identified. Comments will only be accepted in written form.

Request for Public Comments

We seek comments concerning (i) The eight species proposed for inclusion in the applicant's proposed multispecies habitat conservation plan (MSHCP), including information regarding their ranges, distribution areas, population sizes and population trends; (ii) relevant data concerning the impacts of the proposed development on these species; (iii) any other environmental issues that should be considered with regard to the proposed development and permit action; and (iv) the range of alternatives to be included in the EIS or EA.

Public Comments

Please direct any comments to the Service contact listed above in the **ADDRESSES** section, and any questions to the Service contact listed in the **FOR FURTHER INFORMATION CONTACT** section. All comments and materials we receive, including names and addresses, will become part of the administrative record and may be released to the public. 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.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: March 17, 2011.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region,Sacramento, CA.

[FR Doc. 2011–6820 Filed 3–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N063; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
069439	Steve Martin's Working Wildlife	75 FR 62139; October 07, 2010	March 10, 2011.
781606	Wildlife Conservation Society	75 FR 82409; December 30, 2010	March 8, 2011.
25983A	Mote Marine Laboratory	75 FR 82409; December 30, 2010	March 11, 2011.
31720A	David Hubbard	76 FR 7580; February 10, 2011	March 17, 2011.
32570A	Robert Amon	76 FR 7580; February 10, 2011	March 17, 2011.
Marine Mammals			
046081	U.S. Fish and Wildlife Service, Marine Mammals Management.	75 FR 57977; September 23, 2010	March 11, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Dated: March 18, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–6831 Filed 3–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX11CY00STF0000]

Proposed Information Collection: Strengthening the Scientific Understanding of Climate Change Impacts on Freshwater Resources of the United States

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice; request for comments.

SUMMARY: An interagency team of Federal agencies with freshwater resource management responsibilities is seeking public review and comment on a draft report to Congress titled "*Strengthening the Scientific Understanding of Climate Change Impacts on Freshwater Resources of the United States*."

The draft report reviews key issues related to freshwater resource data and climate change and identifies next steps to improve the Nation's capacity to detect and predict changes in freshwater resources that are likely to result from a changing climate. It was prepared in response to Section 9506 of Public Law 111–11 by an interagency team of water data program managers and scientists.

The interagency team cooperated with the Subcommittee on Water Availability and Quality (SWAQ), an interagency subcommittee of the National Science and Technology Council (NSTC) Committee on Environment Natural Resources, and Sustainability (CENRS) and the Interagency Climate Change Adaptation Task Force and its Water Resources Workgroup. The interagency team also collaborated with a range of interested parties including the Advisory Committee on Water Information (ACWI). This draft report was prepared for public review and comment and is available on the Internet at *http://www.acwi.climate/freshwater/report* along with a link for providing comments.

DATES: Please submit comment on or before April 22, 2011.

ADDRESSES: You may submit comments by:

- *E-mail: tschertz@usgs.gov.* Include "9506 Report" in the subject line of the message.
- *Mail:* Send the original and three copies of your comments to: T. Schertz, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 412, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: T. Schertz, 703–648–6864, *tschertz@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information is collected from the public regarding the distribution of a draft report to Congress titled "*Strengthening the Scientific Understanding of Climate Change Impacts on Freshwater Resources of the United States*." An interagency team of Federal agencies with freshwater resource management responsibilities is seeking public review and comment on the draft report. The draft report reviews key issues related to freshwater resource data and climate change and identifies next steps to improve the Nation's capacity to detect and predict changes in freshwater resources that are likely to result from a changing climate. It was prepared in response to Section 9506 of Public Law 111–11 by an interagency team of water data program managers. The interagency team cooperated with the Subcommittee on Water Availability and Quality (SWAQ), an interagency subcommittee of the National Science and Technology Council (NSTC) Committee on Environment Natural Resources, and Sustainability (CENRS) and the Interagency Climate Change Adaptation Task Force and its Water Resources Workgroup. The interagency team also collaborated with a range of interested parties including the Advisory Committee on Water Information (ACWI).

This draft report was prepared for public review and comment and is available on the Internet at *http://www.acwi.climate/freshwater/report* along with a link for providing comments.

Type of Request: This is an existing collection in use without an OMB control number or expiration date.

Affected Public: State and local government employees and private individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 500.

Estimated Total Annual Responses: 500.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 500 hours.

Dated: March 11, 2011.

Jerad Bales,

Chief of Science and Research for Water, U.S. Geological Survey.

[FR Doc. 2011–6798 Filed 3–22–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia.

DATES: BLM will file the plat of survey on April 22, 2011.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fifth Principal Meridian, Minnesota

T. 145 N. R. 40 W.

The plat of survey represents the corrective dependent resurvey of a portion of the East and west boundary, a portion of the subdivisional lines, a portion of sections subdivisions, and the subdivision of sections 31, 34 and 34, Township 145 North, Range 40 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted February 3, 2011.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: February 16, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–4045 Filed 3–22–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.DD0000; HAG 11–0168]

Meeting: Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southeast Oregon Resource Advisory Council (SEORAC) will meet as indicated below.

DATES: The meeting will be held on April 28, 2011 and April 29, 2011.

ADDRESSES: The meeting will take place at the BLM Lakeview Office, 1301 South G Street, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *mark_wilkening@blm.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be held on April 28 and April 29, 2011, at the BLM Lakeview District Office Conference Room, 1301 South G Street, Lakeview, Oregon. On April 28, the meeting will be held from 1 p.m. to 4 p.m. Pacific Time. On April 29, the meeting will be held from 8 a.m. to 12 p.m. Pacific Time. The meeting may include such topics as an update on Oregon Department of Fish and Wildlife Sage-grouse plan; a report by the Federal managers on litigation, energy projects, and other issues affecting their districts; an update on BLM's Vegetation Environmental Impact Statement; a discussion of what to do with Oregon Natural Desert Association's request to organize a collaborative effort for wilderness; a Status Report on the BLM Vegetation Environmental Impact Statement step-down to the district treatments; information on the effects of wildland designation by the Department of the Interior; the election of officers; and a decision on the body of work that the SEORAC would like to accomplish this year and other matters as may reasonably come before the Council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 10 a.m. on April 29, 2011. Those who verbally address the SEORAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the SEORAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM Vale District Office at (541) 473–6218 as soon as possible.

Larry Frazier,

Associate Vale District Manager.

[FR Doc. 2011–6721 Filed 3–22–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT03000–L14300000.EU0000; IDI–36320]

Notice of Realty Action; Extension of Temporary Segregation of Public Lands for Proposed Disposal in Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice extends the temporary segregation on 2,480 acres of public lands in Blaine County, Idaho for up to 2 additional years.

FOR FUTHER INFORMATION CONTACT: Tara Hagen, Realty Specialist, Bureau of Land Management Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352 or by phone at (208) 732–7205.

SUPPLEMENTARY INFORMATION: Notification of a 2-year segregation of the following described public land from all forms of appropriation under the public land laws, including the mining laws, except the sale and exchange provisions of the Federal Land Policy and Management Act of 1976, appeared in the **Federal Register** on March 25, 2009 (74 FR 12890):

Boise Meridian

T. 2 S., R. 18 E.,
Secs. 25 and 26;
Sec. 27, lots 1 to 8, inclusive, E½, and E½W½;
Sec. 34, lot 1, N½NE¼, and NE¼NW¼;
Sec. 35, E½, and N½NW¼.

The area described contains approximately 2,480 acres in Blaine County.

The Bureau of Land Management (BLM) in cooperation with the Federal Aviation Administration (FAA) intends to prepare a management framework plan amendment and associated environmental impact statement (EIS) to consider the location and construction of a replacement airport for the Friedman Memorial Airport. This also involves the potential disposal of public land in Blaine County, Idaho. The FAA

has been identified as the lead agency for the replacement airport EIS. The BLM is a cooperating agency, as one of the alternative sites occurs wholly on public land administered by the BLM. During processing of this complex EIS, the FAA has encountered unanticipated delays, including the need for additional geotechnical, noise, and water studies.

In accordance with 43 CFR 2711.1–2(d), the BLM Idaho State Director has determined that extension of the temporary segregation of the land described in this notice is necessary to provide sufficient time to complete the final processing steps required to consider these lands for disposal. The segregative effect will terminate non issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on March 24, 2013, whichever occurs first.

(Authority: 43 CFR 2711.1–2(d))

Ruth A. Miller,

Shoshone Field Manager.

[FR Doc. 2011–6751 Filed 3–22–11; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–766]

In the Matter of Certain Gemcitabine and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 20, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Eli Lilly and Company of Indianapolis, Indiana. Eli Lilly filed letters supplementing the complaint on February 9 and 16, 2011. The Commission requested additional information on March 2, 1011. Eli Lilly responded with additional information supplementing its complaint on March 9, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gemcitabine and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,606,048 ("the '048 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope Of Investigation: Having considered the complaint, as supplemented, the U.S. International Trade Commission, on March 16, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain gemcitabine and products containing same by reason of infringement of one or more of claims 1–16, 28, 29, and 33–38 of the '048 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Eli Lilly and Company, Lilly Corporate Center, Indianapolis, IN 46285.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Jiangsu Hansoh Pharmaceutical Co., Ltd., No. 10, Economic and Technical Development Zone, Lianyungang, 222047 China; Intas Pharmaceuticals Ltd., Chinubhai Center, Off Nuhru Bridge, Ashram Road, Ahmedabad—380 009, Gujarat, India; ChemWerth, Inc., 1764 Litchfield Turnpike, Suite 202, Woodbridge, CT 06525–2353; Hospira, Inc., 275 North Field Drive, Lake Forest, IL 60045–2579.

(c) The Commission investigative attorney, party to this investigation, is the Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing

such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 16, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–6799 Filed 3–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,760]

Delphi Corporation Electronics And Safety Division Including On-Site Leased Workers From Acro Service Corporation, Manpower, Manpower Professional Continental, Inc., Alliance Group Technology and Sypris Test and Measurement Currently Known as Tektronix Service Solutions, Kokomo, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 14, 2008, applicable to workers of Delphi Corporation, Electronics and Safety Division, Kokomo, Indiana. The notice was published in the **Federal Register** on February 29, 2008 (73 FR 11152). The certification was amended on October 16, 2008, April 14, 2009, May 12, 2009 and June 26, 2009 to include on-site leased workers from Acro Service Corporation, Manpower, Manpower Professional, Continental, Inc., and Alliance Group Technology. The notices were published in the **Federal Register** on October 27, 2008 (73 FR 63733), April 30, 2009 (74 FR 19989), June 16, 2009 (74 FR 28556–28557), and July 14, 2009 (74 FR 34041), respectively.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of various types of automobile components, including: Heating, ventilating, air-conditioning systems (HVAC), amplifiers, mainboards, gas control modules, hybrid airmeter electronics, hybrid ignition electronics, pressure sensors, transmission control modules, crash sensing devices, occupant sensing devices, warning systems and semiconductors.

New information shows that leased workers of Sypris Test and Measurement, currently known as Tektronix Service Solutions, was employed on-site at the Kokomo, Indiana location of Delphi Corporation, Electronics and Safety Division. The Department has determined that these workers were sufficiently under the control of Delphi Corporation, Electronics and Safety Division.

Based on these findings, the Department is amending this certification to include leased workers of Sypris Test and Measurement, currently known as Tektronix Service Solutions, working on-site at the Kokomo, Indiana location of the subject firm.

The intent of the Department's certification is to include all workers employed at Delphi Corporation, Electronics and Safety Division who were adversely affected by a shift in production in Mexico.

The amended notice applicable to TA–W–62,760 is hereby issued as follows:

All workers of Delphi Corporation, Electronics and Safety Division, including on-site leased workers from Acro Service Corporation, Manpower, Manpower Professional, Continental, Inc., Alliance Group Technology, and Sypris Test and Measurement, currently known as Tektronix Service Solutions, Kokomo, Indiana, who became totally or partially separated from employment on or after January 28, 2007, through February 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of March 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6805 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–75,236
SILBERLINE MANUFACTURING COMPANY, INC., HOMETOWN FACILITY, TAMAQUA, PENNSYLVANIA.

TA–W–75,236A
SILBERLINE MANUFACTURING COMPANY, INC., LANSFORD FACILITY, LANSFORD, PENNSYLVANIA.

TA–W–75,236B
SILBERLINE MANUFACTURING COMPANY, INC., TIDEWOOD FACILITY, TAMAQUA, PENNSYLVANIA.

TA–W–75,236C
SILBERLINE MANUFACTURING COMPANY, INC., DECATUR, FACILITY, DECATUR INDIANA.

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 4, 2011, applicable to workers of Silberline Manufacturing Company, Inc., Hometown Facility, Tamaqua, Pennsylvania, Silberline Manufacturing Company, Inc., Lansford Facility, Lansford, Pennsylvania, Silberline Manufacturing, Inc., Tidewood Facility, Tamaqua, Pennsylvania and Silberline Manufacturing Company, Inc., Decatur Facility, Decatur, Indiana. The notice will be published soon in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of special effects and performance pigments.

The review shows that on March 13, 2009, a certification of eligibility to apply for adjustment assistance was issued for all workers of Silberline Manufacturing Company, Inc., Hometown Facility, Tamaqua, Pennsylvania (TA–W–65,023), Silberline Manufacturing Company, Inc., Lansford Facility, Lansford, Pennsylvania (TA–W–65,023A), Silberline Manufacturing, Inc., Tidewood Facility, Tamaqua, Pennsylvania (TA–W–65,023B), and Silberline Manufacturing Company, Inc., Decatur Facility, Decatur, Indiana (A–W–65,023C). This certification remained in effect until March 13, 2011. The notice was published in the **Federal Register** on March 25, 2009 (74 FR 12901–12902).

In order to avoid an overlap in worker group coverage, the Department is amending the March 10, 2011 impact date established for TA–W–75,236, TA–W–75,236A, TA–W–75,236B and TA–W–75,236C to read March 14, 2011.

The amended notice applicable to TA–W–75,236, TA–W–75,236A, TA–W–75,236B and TA–W–75,236C are hereby issued as follows:

All workers of Silberline Manufacturing Company, Inc., Hometown Facility,

Tamaqua, Pennsylvania (TA–W–75,236), Silberline Manufacturing Company, Inc., Lansford Facility, Lansford, Pennsylvania (TA–W–75,236A), Silberline Manufacturing Company, Inc., Tidewood Facility, Tamaqua, Pennsylvania (TA–W–75,236B), and Silberline Manufacturing Company, Inc., Decatur Facility, Decatur, Indiana, (TA–W–75,236C), who became totally or partially separated from employment on or after March 14, 2011, through March 4, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 15th day of March, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6802 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,951]

ETHICON, a Subsidiary of Johnson & Johnson Including On-Site Leased Workers From Kelly Temporary Services, San Angelo, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 20, 2010, applicable to workers of ETHICON, a subsidiary of Johnson & Johnson, including on-site leased workers from Kelly Temporary Services, San Angelo, Texas. The workers are engaged in the production of surgical sutures. The notice was published in the **Federal Register** on September 3, 2010 (75 FR 54186).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The review shows that on February 1, 2008, a certification of eligibility to apply for adjustment assistance was issued for all workers of ETHICON, A Johnson and Johnson Company, San Angelo, Texas, separated from employment on or after June 9, 2007 through February 1, 2010. The notice was published in the **Federal Register** on February 13, 2008 (73 FR 8369).

In order to avoid an overlap in worker group coverage, the Department is amending the April 13, 2009 impact date established for TA–W–73,951, to read February 2, 2010.

The amended notice applicable to TA–W–73,951 is hereby issued as follows:

All workers of ETHICON, a subsidiary of Johnson & Johnson, including on-site leased workers from Kelly Temporary Services, San Angelo, Texas, who became totally or partially separated from employment on or after February 2, 2010, through August 20, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 15th day of March, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6807 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,880]

Lafarge North America, Inc., a Subsidiary of Lafarge, Including On-Site Leased Workers From Industrial Services, Incorporated and Summit Building Maintenance, Seattle, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 30, 2010, applicable to workers of Lafarge North America, Inc., a subsidiary of Lafarge, Seattle, Washington. The workers produce cement and cementitious products. The notice was published in the **Federal Register** on December 13, 2010 (75 FR 77668).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Industrial Services, Incorporated and Summit Building Maintenance were employed on-site at the Seattle, Washington location of Lafarge North America, Inc., a subsidiary of Lafarge. The Department has determined that these workers were sufficiently under the control of Lafarge North America, Inc., a subsidiary of Lafarge to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Industrial Services, Incorporated and Summit Building Maintenance working on-site at the Seattle, Washington location of Lafarge North America, Inc., a subsidiary of Lafarge.

The amended notice applicable to TA–W–74,880 is hereby issued as follows:

All workers of Lafarge North America, Inc., a subsidiary of Lafarge, including on-site leased workers from Industrial Services, Incorporated and Summit Building Maintenance, Seattle, Washington, who became totally or partially separated from employment on or after November 10, 2009, through November 30, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 15th day of March, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6801 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,839]

St. John Knits, Inc., Irvine, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 31, 2011, applicable to workers of St. John Knits, Inc., Irvine, California. The workers are engaged in the production of women's apparel. The notice was published in the **Federal Register** on February 24, 2011 (76 FR 10397).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The review shows that on August 18, 2008, a certification of eligibility to apply for adjustment assistance was issued for all workers of St. John Knits, Sample Manufacturing Department, Irvine, California, separated from employment on or after June 11, 2007 through August 18, 2010. The notice was published in the **Federal Register** on September 3, 2008 (73 FR 51529).

In order to avoid an overlap in worker group coverage, the Department is amending the impact dates established for TA–W–74,839. The impact date applicable to workers of the Sample Manufacturing Department is August 19, 2010. The impact date applicable to all other workers of St. Johns Knits, Inc., Irvine, California, is November 3, 2009.

The amended notice applicable to TA–W–75,839 is hereby issued as follows:

All workers of St. John Knits, Inc., Sample Manufacturing Department, Irvine, California, who became totally or partially separated from employment on or after August 19, 2010, through January 31, 2013, all other workers of St. John Knits, Inc., Irvine, California, who became totally or partially separated from employment on or after November 3, 2009, through January 31, 2013, and all workers in the group threatened with total or partial separation from January 31, 2011 through January 31, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 8th day of March 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6800 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,994]

Hach Company a Subsidiary of Danaher Including On-Site Leased Workers From Express Employment Profesionals, Grants Pass, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 20, 2010, applicable to workers of Hack Company, a subsidiary of Danaher, Grants Pass, Oregon. The workers produce devices used to test air and water quality.

The notice was published in the **Federal Register** on March 5, 2010 (75 FR 10320).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Express Employment Professionals were employed on-site at the Grants Pass, Oregon location of Hach Company, s subsidiary of Danaher. The Department has determined that these workers were sufficiently under the control of Hach Company, subsidiary of Danaher to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Express Employment Professionals working on-site at the Grants Pass, Oregon location of Hach Company, a subsidiary of Danaher.

The amended notice applicable to TA–W–70,994 is hereby issued as follows:

All workers of Hach Company, a subsidiary of Danaher, including on-site leased workers from Express Employment Professionals, Grants Pass, Oregon, who became totally or partially separated from employment on or after June 4, 2008, through January 20, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 15th day of March, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6806 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *March 7, 2011 through March 11, 2011.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,679	LSI Greenlee Lighting, Inc	Carrollton, TX	September 17, 2009.
74,709	TeleTech Services Corporation, Teletech Holdings, Inc.; Leased Workers United Parcel Services of America, Inc.	Greenville, SC	October 8, 2009.
74,747	F. J. Folz Company, Inc	Evansville, IN	October 15, 2009.
75,136	Data Listing Services (Jamestown), LLC, The Connection; Data Listing Services, LLC.	Penn Yan, NY	January 24, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,876	Contec, LLC	SeaTac, WA	November 9, 2009.
75,021	Thompson Type, Inc	San Diego, CA	December 17, 2009.
75,028	Alpha Technology Corporation, Alpha Corporation	Howell, MI	December 20, 2009.
75,028A	Leased Workers from Employment Plus, Endevis, Acteon Partners, etc., Alpha Technology Corporation.	Howell, MI	December 20, 2009.
75,067	JLG Industries, Inc., Access Segment; Oshkosh Corporation; Leased Workers Aerotek.	McConnellsburg, PA	January 3, 2011.
75,080	American Pad & Paper, LLC, Esselte Corporation; Leased Workers from Administaff Companies II, etc.	Mattoon, IL	January 7, 2010.
75,116	Cooper Industries, Cooper Power Systems Division; Leased Workers from Aerotek Staffing.	Pewaukee, WI	January 18, 2010.
75,219	United Parcel Service, Inc. (Ohio), Billing Operations, Spherion	West Columbia, SC	February 8, 2010.
75,229	H.C. Starck, Inc., Ceramics and Surface Technology/Advanced Metals and Ceramic Powders Dept.	Coldwater, MI	February 4, 2010.
75,271	Broyhill Furniture Industries, Inc., Corporate Office; Including Leased Workers and Workers Wages Reported Under, etc.	Lenoir, NC	December 3, 2010.
75,296	S4Carlisle Publishing Services	Dubuque, IA	February 14, 2010.
75,305	UDR, Inc., Accounting Department	Glen Allen, VA	February 9, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,161	Continental Plastics Company, Leased Workers from ETS Staffing	Fraser, MI	January 31, 2010.
75,161A	Continental Plastics Company, Leased Workers from Randstad Staffing and Recruiting.	Alpharetta, GA	January 31, 2010.
75,161B	Continental Plastics Company, Chesterfield, Inc., Leased Workers from ETS Staffing.	Chesterfield, MI	January 31, 2010.
75,161C	Continental Coatings, LLC, Leased Workers from ETS Staffing	China Township, MI	January 31, 2010.
75,161D	Continental Industries, LLC, Leased Workers from ETS Staffing	Benzonia, MI	January 31, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
75,131	JLG Industries, Inc., Access Division; Oshkosh Corporation	Hagerstown, MD.	
75,310	BancTec, Field Service Representatives	N/A, NC.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,894	Cross Creek Furniture	Hudson, NC.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
75,269	Evergreen Solar, Inc., 112 Barnum Road; Leased Workers Advantage Technical Resources and Kelly Service.	Devens, MA	February 11, 2010.
75,272	Evergreen Solar, Inc., Leased Workers from Advantage Technical Resources.	Marlboro, MA.	

I hereby certify that the aforementioned determinations were issued during the period of *March 7, 2011 through March 11, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: March 16, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6804 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,938]

Management Resources Group, Inc., Including Workers in the States of Georgia and New York Reporting to Southbury, CT; Notice of Revised Determination on Remand

On January 13, 2011, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Management Resources Group, Inc.* v. *United States Secretary of Labor,* Court No. 10–00345.

On April 15, 2010, a State of Connecticut Workforce Office representative filed a petition for Trade Adjustment Assistance (TAA) with the Department of Labor (Department) on behalf of workers and former workers of Management Resources Group, Inc., Southbury, Connecticut (subject firm). Workers at the subject firm (subject worker group) are engaged in employment related to the supply of asset reliability engineering consulting services. The worker group does not include on-site leased workers.

The Department's initial findings revealed that the subject firm did not import services like or directly competitive with the engineering consulting services supplied by the workers, shift the supply of these services abroad, or acquire from a foreign country the supply of these services, during the period under investigation. Further, the Department surveyed the subject firm's major declining customers regarding imports of engineering consulting services during the relevant time period. The survey revealed that none of the customers imported services like or directly competitive with those supplied by the subject firm. Consequently, the Department determined that the group eligibility requirements under Section 222 of the Trade Act, as amended (the Act), had not been met.

On September 16, 2010, the Department issued a Negative Determination regarding eligibility to apply for TAA applicable to workers and former workers of the subject firm. The Department's Notice of Determination was published in the **Federal Register** on September 29, 2010 (75 FR 60145).

The Department did not receive a request for administrative reconsideration.

In the complaint to the USCIT, the Plaintiffs claimed that subject firm workers were impacted by a shift in services to a foreign country as "[Management Resources Group, Inc.] outsourced work previously done by Plaintiffs to a firm in India * * *."

On January 11, 2011, the Department requested voluntary remand to conduct further investigation to address the Plaintiffs' allegations, to determine whether the subject worker group is eligible to apply for TAA, and to issue an appropriate determination. On January 13, 2011, the USCIT granted the Department's Motion for Voluntary Remand.

To apply for worker adjustment assistance under Section 222(a) of the Act, 19 U.S.C. 2272(a), the following criteria must be met:

I. The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.

II. The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied if either:

(i)(I) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; OR

(i)(II) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

III. The third criterion requires that the shift/acquisition must have contributed importantly to the workers' separation or threat of separation. *See* Section 222(a)(2)(B)(ii) of the Act, 19 U.S.C. 2272(a)(2)(B)(ii).

The intent of the Department is for a certification to cover all workers of the subject firm, or appropriate subdivision, who were adversely affected by increased imports of services like or directly competitive with those supplied by the subject worker group or a shift to or acquisition from a foreign country of the service supplied by the workers, based on the investigation of the TAA petition.

During the remand investigation, the Department carefully reviewed previously submitted information, obtained additional information from the subject firm, and solicited input from the Plaintiffs.

Based on the information collected during the remand investigation, the Department determined that a significant number or proportion of the workers at the subject firm was totally or partially separated, or threatened with such separation. Further, the Department determined that workers in the Inventory Services Group, which performs activities related to Maintenance, Repair, and Operations, were impacted by a shift in the supply of services abroad and that the shift contributed importantly to worker separations at the subject firm. The functions of the other groups within the subject firm also support activities related to supply of asset reliability engineering consulting services, and are included under this petition.

Specifically, during the period under investigation, the subject firm shifted to India the supply of services like or directly competitive with those supplied by the Inventory Services Group. Information collected revealed evidence of a foreign contract in conjunction with declines in domestic employment.

The subject worker group includes all workers at the Southbury, Connecticut location and employees who worked remotely in the States of Georgia and New York and reported to Southbury, Connecticut during the relevant time period. The subject worker group does not include on-site leased workers.

After careful review on remand, the Department has determined that a significant number or proportion of the workers at the subject firm was separated. Further, the Department has determined that a shift abroad of services like or directly competitive with the services supplied by the subject worker group contributed importantly to worker group separations. Therefore, the Department has determined that the group eligibility requirements, under Section 222(a)(2)(B) of the Act, have been met.

Conclusion

After careful review of the facts during the remand investigation, I determine that Management Resources Group, Inc., Southbury, Connecticut, has shifted to a foreign country the supply of services like or directly competitive with the engineering consulting services supplied by the subject worker group. In accordance with the provisions of the Act, I make the following certification:

All workers of Management Resources Group, Inc., Southbury, Connecticut, including workers in Georgia and New York who report to the subject firm, who are engaged in employment related to the supply of asset reliability engineering consulting services and became totally or partially separated from employment on or after April 15, 2008, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 10th day of March 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–6803 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0013]

TUV Rheinland PTL, LLC; Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision to grant recognition to TUV Rheinland PTL, LLC, as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: This recognition becomes effective on March 23, 2011 and will be valid until March 23, 2016, unless terminated or modified prior to that date in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110. For information about the Nationally Recognized Testing Laboratory Program, go to *http://www.osha.gov,* and select "N" in the site index.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of TUV Rheinland PTL, LLC (TUVPTL) as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment and materials, and use of the supplemental program, listed below. OSHA will detail TUVPTL's scope of recognition on an informational Web page for the NRTL, as further explained below.

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding, and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition, or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.* Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the product testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

TUVPTL applied for recognition as an NRTL (*See* Ex. 2—TUVPTL application dated 7/29/2008) [1] pursuant to 29 CFR 1910.7, and OSHA published the required preliminary notice in the **Federal Register** on November 18, 2010 (75 FR 70692) to announce the application. The notice included a preliminary finding that TUVPTL could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by December 20, 2010. OSHA received no comments in response to this notice. OSHA now is proceeding with this final notice to grant TUVPTL's recognition application.

All public documents pertaining to the TUVPTL application are available for review by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2010–0013.

The current address of the laboratory facility (site) that OSHA recognizes for TUVPTL is: TUV Rheinland PTL, 2210 South Roosevelt Street, Tempe, Arizona 85282.

General Background on the Application

According to public information (*http://www.tuvptl.com/tuv-ptl-history.html*), TUVPTL states that it is a testing and certification laboratory for photovoltaic products and a leading test organization for photovoltaic technology. Arizona State University (ASU) established the organization in 1992 as the Photovoltaic Testing Laboratory (PTL). The TUVPTL Web site states that the PTL was instrumental in the development of many major standards concerning photovoltaic products. It was part of ASU until becoming an affiliate of TUV Rheinland Group.

TUV Rheinland North America, Inc., (TUVRNA), a currently recognized NRTL, submitted an application, dated July 29, 2008, to expand its recognition to include TUVPTL as a recognized site. (*See* Ex. 2.) In response to OSHA's request for clarification, TUVRNA amended its application to provide additional technical details, and then provided further details in a later update. (*See* Ex. 3—TUVPTL amended application dated 5/29/2009.) OSHA's NRTL Program staff performed an on-site assessment of TUVPTL's facility in January 2010. Based on this assessment, TUVPTL revised its application to seek recognition as an NRTL, thus superseding the July 2008 expansion application by TUVRNA. (*See* Ex. 4—TUVPTL revised application dated 1/29/2010.) This revised application incorporated the bulk of the amended application. The OSHA staff recommended recognition of TUVPTL in their on-site review report of the assessment. (*See* Ex. 5—OSHA on-site review report on TUVPTL.)

Due to its close affiliation with TUVRNA, the applicant will use many TUVRNA operational and quality-control procedures for operating as an NRTL. For example, TUVPTL's NRTL quality-control system will follow that used by TUVRNA: QP100001—Product Certification Quality Manual (Ex. 3; *see* document designated QP100001). Through its application information (*see* Ex. 2), TUVPTL represents that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA NRTL. It also states that it meets, or will meet, the requirements for recognition defined in 29 CFR 1910.7.

This notice discusses the four requirements for recognition (*i.e.,* capability, control procedures, independence, and creditable reports

[1] A number of documents, or information within documents, described in this **Federal Register** notice are the applicant's internal, detailed procedures, or contain other confidential business or trade-secret information. These documents and information, designated by an "NA" at the end of, or within, the sentence or paragraph describing them, are not available to the public.

and complaint handling) below, along with examples that illustrate how TUVPTL meets each of these requirements. The applicant's summary addressing OSHA's evaluation criteria (*see* Detailed Application Information/ Evaluation Criteria (DAI/EC) summary documents, Exs. 3 and 4) reference many, but not all, of the documents or processes described below in this notice.

Capability

Section 1910.7(b)(1) states that, for each specified item of equipment or material requiring listing, labeling, or acceptance by an NRTL, the NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality-control programs) to perform appropriate testing. The "Capability" section of the DAI/EC summary document (NA) shows that the applicant has security measures and detailed procedures in place to restrict or control access to its facility, to areas within its facility, and to confidential information. This section also states that TUVPTL's facility has equipment for monitoring, controlling, and recording environmental conditions during tests, and for handling test samples. It states further that the facility has adequate test areas and energy sources, and procedures for controlling incompatible activities. OSHA's on-site review report (Ex. 5, p. 2) confirmed this information concerning the facility, as well as its adequacy. TUVPTL provided a detailed list of its testing equipment (NA), and OSHA's on-site review (Ex. 5, p. 2) confirmed that this equipment is in place and adequate for the scope of testing requested.

The "Capability" section of the DAI/ EC summary documents (NA) indicates that TUVPTL has detailed procedures addressing the maintenance and calibration of equipment, as well as the types of records maintained for, or supporting, many laboratory activities. It also indicates that TUVPTL has detailed procedures for conducting testing, review, and evaluation, and for capturing the test data required by the standard for which it seeks recognition. OSHA's on-site review report (Ex. 5, p. 2) notes that TUVPTL currently is using these procedures to test products for other NRTLs. Further, this section indicates that TUVPTL has detailed procedures for processing applications and developing new procedures.

The revised application (Ex. 4) indicates that TUVPTL has the necessary procedures to adequately address training or qualifying staff for particular technical tasks (NA). The revised application and OSHA's on-site review report (Ex. 5, p. 3) indicate that TUVPTL has the qualified personnel to perform the proposed scope of testing based on their education, training, technical knowledge, and experience. The revised application and OSHA's on-site review report (Ex. 5, p. 3) also provide evidence that TUVPTL has an adequate quality-control system in place.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide controls and services, to the extent necessary, for the particular equipment or material undergoing listing, labeling, or acceptance. These controls and services include procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The "Control Programs" section of the DAI/EC summary document shows that TUVPTL has the quality-control manual and detailed procedures to address the steps involved in listing and certifying products. TUVPTL will use the certification mark of its affiliate, TUVRNA, which is similar to an arrangement granted by OSHA to two other affiliated NRTLs. (*See* 67 FR 3737, January 25, 2002.) However, TUVPTL personnel must perform the final technical review, make the certification decision, and authorize the use of the mark. OSHA is imposing this condition as part of TUVPTL's NRTL recognition. In addition, the "Control Programs" section shows that the applicant has certification procedures (NA), and that these procedures address authorization of certifications and audits of factory facilities. The audits apply to both the initial evaluations and the follow-up inspections of manufacturers' facilities. This section indicates that procedures also exist for authorizing the use of the certification mark, and the actions taken when TUVPTL finds that the manufacturer is deviating from the certification requirements. Factory inspections will be a new activity for TUVPTL, and OSHA will need to review the effectiveness of TUVPTL's inspection program when it is in place. As a result, OSHA is imposing a condition as part of TUVPTL's NRTL recognition that ensures that TUVPTL conducts inspections properly, and at the frequency set forth in the applicable NRTL Program policy (*see* OSHA Instruction CPL 1–0.3, Appendix C, paragraph III.A).

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers that are subject to the testing requirements, and of any manufacturers or vendors of equipment or materials tested under the NRTL Program. OSHA has a policy for the independence of NRTLs that specifies the criteria used for determining whether an organization meets the above requirement. (*See* OSHA Instruction CPL 1–0.3, Appendix C, paragraph V.) This policy contains a non-exhaustive list of relationships that would cause an organization to fail to meet the specified criteria.

The "Independence" section of the DAI/EC, and additional information submitted by TUVPTL (Ex. 4, section titled, "Information For Evaluating Compliance") shows that it has none of these relationships, or any other relationship that could subject it to undue influence when testing for product safety. TUVPTL's major owner is a subsidiary of the parent company of TUVRNA, the NRTL currently recognized by OSHA. OSHA found no information about TUVRNA's ownership that would raise an issue of TUVPTL's non-compliance with the NRTL Program's independence policy.

There are two other owners of TUVPTL, each owning less than 10% of the organization. One owner is an individual, and OSHA found no information showing any affiliation of this individual with manufacturers, vendors, or major users of products requiring NRTL approval. The remaining owner is Arizona Technology Enterprises (AzTE), which has a Web page (*http://www.azte.com/page/ about_us/foundation*) that states that it "was established in 2003 as a limited liability company whose sole member is the ASU Foundation. The ASU Foundation is an independent non-profit organization that acts as the principal agent through which gifts are made to benefit [ASU]." OSHA found no information to indicate that a manufacturer, vendor, or major user of products requiring NRTL approval, or the major owners of these entities, has an ownership interest in the Foundation or ASU, with ASU being a nonprofit, state-operated educational institution.

According to AzTE's Web page (*http://www.azte.com/page/ for_industry*), "AzTE drives the transfer of discoveries and innovation from ASU's labs to the marketplace through technology partnering and the creation of new technology-based ventures." AzTE acts as the agent to license these technologies, and takes an equity stake in the companies that commercialize the

technology. AzTE's Web page (*http://www.azte.com/page/portfolio*) shows that the vast majority of the technologies licensed in this manner do not involve the types of products for which OSHA requires NRTL approval. Companies may use materials and items developed from a few of these technologies (such as a sensor, electrode, or wafer) in manufacturing these types of products, but OSHA found only one product that AzTE licenses that requires NRTL approval. The entity to which AzTE licensed this product, a bacterial detection system, was Biosense International (Biosense). At the time OSHA published its preliminary notice to announce TUVPTL's application (75 FR 70692), the State of Arizona Corporate Commission, which registered Biosense as a corporation, administratively dissolved Biosense as of June 14, 2010. At the time OSHA prepared this final notice, Biosense is in good standing according to the Commission's Web site. However, OSHA has no information that AzTE's ownership of BioSense would pose any conflicts with OSHA's independence requirement. The remainder of AzTE's equity stakes are minor, thus mitigating the undue influence that such companies could exert on TUVPTL should these companies sell or use products tested by TUVPTL.

To address future business ventures by AzTE, OSHA is imposing conditions on TUVPTL to avoid any situation that could conflict with OSHA's NRTL independence requirement; OSHA will actively monitor TUVPTL's compliance with these conditions.

In summary, the information related to independence demonstrates that TUVPTL meets the independence requirement. Additionally, OSHA is imposing conditions on TUVPTL that will enable OSHA to monitor TUVPTL's compliance with the NRTL independence requirements in the future.

Creditable Reports and Complaint Handling

Section 1910.7(b)(4) specifies that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and free of bias, and for handling complaints and disputes under a fair and reasonable system. The "Report and Complaint Procedures" section of the DAI/EC summary document (NA) shows that the applicant has detailed procedures describing the content of the test reports, and other detailed procedures describing the preparation and approval of these reports. This section also shows that the applicant has procedures for recording, analyzing, and processing complaints from users, manufacturers, and other parties in a fair manner.

Supplemental Programs

OSHA is approving TUVPTL to use the following supplemental program for which it applied:

Program 9: Acceptance of Services Other Than Testing or Evaluation Performed by Subcontractors or Agents (Calibration Services Only)

OSHA is approving TUVPTL to use Program 9 only for calibration services, and added this limitation to the program's description above. The application notice for TUVPTL indicated this limitation, and OSHA is adding it here for clarity. As noted in an earlier **Federal Register** notice of NRTL recognition (75 FR 222), OSHA will approve a new NRTL to use Program 9 for other services or other supplemental programs only after OSHA determines that the new NRTL tests, evaluates, and performs inspections adequately using its own staff located at its recognized site(s).

Additional Conditions

As noted above, a minor owner of TUVPTL, AzTE, may have an equity stake in companies that use technologies licensed by AzTE. In its present review, OSHA found that AzTE's ownership interest in these companies does not currently result in a conflict with OSHA's NRTL independence requirement; however, the possibility exists that AzTE could, in the future, acquire sufficient ownership in one of these companies to establish such a conflict or potential conflict should any of these companies sell, or become a major user of, the types of products that require NRTL approval. Thus, OSHA is imposing conditions to avoid conflicts or possible conflicts. These conditions are numbered 1 and 2 under the "Conditions" section below.

Additionally, as described above, while TUVPTL has testing, review, and evaluation procedures, OSHA could not review how TUVPTL fully implemented them because TUVPTL was not using them fully for testing and certifying products under the NRTL Program. In addition, as also described above, while TUVPTL has factory-inspection procedures, it currently does not conduct regular factory inspections. In this regard, TUVPTL only recently developed some components of these factory-inspection procedures. Therefore, OSHA will, having granted NRTL recognition to TUVPTL, review the effectiveness of TUVPTL's factory-inspection program, and do so within a reasonable period. Consequently, OSHA is recognizing TUVPTL conditionally for these procedures, i.e., subject to a later determination of the effectiveness with which TUVPTL implements these procedures. In addition, because TUVPTL will use the mark of its affiliate, TUV Rheinland of North America, Inc., OSHA is imposing a condition to ensure that TUVPTL personnel perform the critical steps involved in certification. These conditions are numbered 3 and 4 under the "Conditions" section below.

These conditions apply solely to TUVPTL's operations as an NRTL, and only to those products that it certifies for purposes of enabling employers to meet OSHA product-approval requirements. These conditions are in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

Imposing these conditions is consistent with OSHA's past recognition of several organizations as NRTLs that met the basic recognition requirements, but needed to further refine or implement their procedures (for example, *see* 63 FR 68306, 12/10/1998, and 65 FR 26637, 05/08/2000). Based on TUVPTL's current activities in testing and certification, OSHA is confident that TUVPTL will conform to the requirements for recognition noted above.

Final Decision and Order

The NRTL Program staff examined TUVPTL's application, the additional submissions, the on-site review report, and other pertinent information. Based on this examination and the analysis, OSHA finds that TUVPTL meets the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory subject to the limitations and conditions listed below. The recognition applies to the site listed above, and the test standard listed below. Pursuant to the authority granted by 29 CFR 1910.7, OSHA hereby grants the recognition of TUVPTL, subject to this limitation and these conditions.

Limitation

OSHA limits the recognition of TUVPTL to testing and certification of products for demonstration of conformance to the following test standard,[2] which OSHA determines is an appropriate test standard within the meaning of 29 CFR 1910.7(c):

[2] The designation and title of this test standard was current at the time OSHA prepared this notice.

UL 1703 Flat-Plate Photovoltaic Modules and Panels

OSHA limits recognition of any NRTL for a particular test standard to equipment or materials (*i.e.,* products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product.

The American National Standards Institute (ANSI) may approve the test standard listed above as an American National Standard. However, for convenience, we may use the designation of the standards-developing organization for the standard instead of the ANSI designation. Under the NRTL Program's policy (*see* OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

Conditions

TUVPTL also must abide by the following conditions of its NRTL recognition, in addition to those conditions already required by 29 CFR 1910.7:

1. AzTE must comply with the following conditions during the period it has an ownership interest in TUVPTL, or in any company that may subsequently purchase or replace TUVPTL, and understands that failure to comply with these conditions may result in OSHA revoking or imposing limits on TUVPTL's NRTL recognition:

a. Identify the total number of companies in which it has an ownership interest and, of this total, the number in which AzTE's interest in the total ownership of a company is 2% or less, and the number in which this interest in a company exceeds 2%.

b. Provide OSHA, annually and as requested, (i) an updated list of companies in which AzTE's ownership interests in a company exceed 2% of the total ownership of the company, and (ii) for each of these companies, a description of each company's business purpose. AzTE also must state whether any of these companies manufactures, distributes, or sells a type of product shown on OSHA's Web page titled, "Type of Products Requiring NRTL Approval."

c. Provide OSHA access (*e.g.,* when auditing TUVPTL) to the record(s) or document(s) filed with the applicable legal authority (*e.g.,* the Secretary of State or other state authority) describing AzTE's ownership interest in those companies in which OSHA determines AzTE has an ownership interest exceeding 2% of the total ownership of the company.

d. Provide OSHA, annually and as requested, the names and affiliations of any of its directors who are not directors of the Arizona State University Foundation.

2. TUVPTL must comply with the following conditions while AzTE, or any other entity that manufactures, distributes, or sells a product tested by TUVPTL, or is affiliated with such an entity,[3] has an ownership interest in TUVPTL:

a. Not test or certify any product under the NRTL Program made, distributed, or sold by a company owned in excess of 2% by AzTE. In addition, before testing or certifying any product for an NRTL client applicant, TUVPTL will follow detailed procedures, reviewed and found acceptable by OSHA, to determine that such a company did not make, distribute, or sell the product.

b. Cease certifications related to the NRTL Program if the following criteria are met: (i) AzTE has more than a 10% ownership interest in a company; (ii) OSHA determines that such a company or one of its subsidiaries, affiliates, or significant owners, makes, distributes, or sells a type of product for which OSHA requires NRTL approval (i.e., one currently shown in OSHA's Web page titled, "Type of Products Requiring NRTL Approval"); and (iii) OSHA determines that the risk of actual or potential undue influence resulting from this ownership is not minor (*see* Condition 2.c, below). If these criteria are met, and AzTE does not, within 60 days of OSHA's request, take steps to reduce such ownership interests below 10%, OSHA will initiate the process to revoke TUVPTL's NRTL recognition.

c. For purposes of Condition 2.b, above, TUVPTL must provide or make available, at OSHA's request, information required by OSHA to determine whether a risk of actual or potential undue influence is not minor. This information may include, but is not limited to, a financial statement(s) or the annual report of the company owned by AzTE, and, if not included in the document(s) provided, a list of the types of products sold or made by the company, and the overall percentage of the company's total revenue derived from selling these products. If TUVPTL cannot or does not provide or make available this information at OSHA's request, OSHA will be unable to determine whether the risk is minor, and, thus, will commence the process to revoke TUVPTL's NRTL recognition.

d. To provide OSHA, annually and as requested, TUVPTL's overall client list, noting those clients that are NRTL clients and, for each such client, whether it is a company in which AzTE has more than a 10% ownership interest. Each list shall be in an electronic format, and shall include the information specified by OSHA. For example, this information may include the client's name and address; the product name(s) and model number(s); the fees paid during the last calendar year by the client for testing and certifying its product(s); and the percentage of TUVPTL's total revenue derived during the last calendar year from testing and certifying this/these product(s).

3. Within 30 days of certifying its first products under the NRTL Program, TUVPTL will notify the OSHA NRTL Program Director of this activity so that OSHA may schedule its first audit of TUVPTL. At this first audit of TUVPTL, TUVPTL must demonstrate that it properly conducted testing, review, evaluation, and factory inspections; TUVPTL must conduct factory inspections at the frequency set forth in the applicable NRTL Program policy.

4. Only TUVPTL personnel may perform the final technical review, make the final certification decision, and authorize use of the TUV Rheinland of North America, Inc., mark for those products TUVPTL certifies under the NRTL Program;

5. TUVPTL will allow OSHA access to TUVPTL's facilities and records to ascertain continuing compliance with the terms of its NRTL recognition, and to perform such investigations as OSHA deems necessary;

6. If TUVPTL has reason to doubt the efficacy of any test standard it is using under its NRTL recognition, it will promptly inform the test standard-developing organization of this concern, and provide that organization with the appropriate relevant information on which it bases its concern;

7. TUVPTL will not engage in, or permit others to engage in, any misrepresentation of the scope or conditions of its NRTL recognition. As part of this condition, TUVPTL agrees that it will allow no representation that it is either a recognized or an accredited NRTL without clearly indicating the specific equipment or material to which this recognition applies, and also clearly

[3] Any condition that applies to AzTE also would apply to such an entity.

indicating that OSHA limits its NRTL recognition to specific products;

8. TUVPTL will inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details of these changes;

9. TUVPTL will meet all of the terms of its NRTL recognition, and will always comply with all OSHA policies pertaining to this recognition; and

10. TUVPTL will continue to meet the requirements for NRTL recognition in all areas covered by the scope of this recognition.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on March 18, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–6856 Filed 3–22–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the *second notice* for public comment; the first was published in the **Federal Register** at 76 FR 2151, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be addressed to: Office of Information and Regulatory Affairs of OMB, *Attention:* Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or via e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Number: 3145–0157.

Type of Request: Intent to seek approval to renew an information collection.

Abstract:

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, "Setting Customer Service Standards," which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Estimate of Burden: The burden on the public will change according to the needs of each individual customer satisfaction survey; however, each survey is estimated to take approximately 30 minutes per response.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; federal government; state, local or tribal governments

Estimated Number of Responses per Survey: This will vary by survey.

Dated: March 18, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–6808 Filed 3–22–11; 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 16th 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. 2011–6846 Filed 3–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 7–9, 2011, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 21, 2010 (74 FR 65038–65039).

Thursday, April 7, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Selected Chapters of the Safety Evaluation Report (SER) with Open Items Associated with the Calvert Cliffs, Unit 3 Combined License Application Referencing the U.S. Evolutionary Power Reactor (EPR) (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, UniStar, and AREVA regarding Chapters 4, 5, 8, 10, 11, 12, 16, 17, and 19 of the SER with Open Items associated with the Calvert Cliffs, Unit 3 combined license application referencing the U.S. EPR design. [**Note:** A portion of this session may be closed to discuss and protect information that is designated as proprietary by AREVA and its contractors pursuant to 5 U.S.C. 552b(c)(4).]

10:45 a.m.–12:45 p.m.: Commission Paper on Emergency Planning for Small Modular Reactors (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a draft Commission Paper on emergency planning for small modular reactors.

1:45 p.m.–4:15 p.m.: Draft Final Regulatory Guide 1.152, "Criteria for Use of Computers in Safety Systems of Nuclear Power Plants," and Cyber Security Related Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final Regulatory Guide 1.152, "Criteria for Use of Computers in Safety Systems of Nuclear Power Plants," the staff's resolution of public comments, and cyber security related activities.

4:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this session may be closed to discuss and protect information that is designated as proprietary by AREVA and its contractors pursuant to 5 U.S.C. 552b(c)(4).]

Friday, April 8, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

10 a.m.– 10:05 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

10:05 a.m.–11:30 a.m.: Human Factors Considerations in Emerging Technology in Nuclear Power Plants (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding human factors considerations in emerging technology in nuclear power plants.

1 p.m.–2:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

2:30 p.m.–2:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

3 p.m.–4 p.m.: Preparation for Meeting with the Commission (Open)—The Committee will discuss the topics for an upcoming meeting with the Commission.

4 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary by AREVA, pursuant to 5 U.S.C 552b(c)(4).]

Saturday, April 9, 2011 Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary by AREVA and its contractors pursuant to 5 U.S.C 552b(c)(4).]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Ms. Ilka Berrios, Cognizant ACRS Staff (Telephone: 301–415–3179, E-mail: *Ilka.Berrios@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 17, 2011.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2011–6838 Filed 3–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR); Notice of Meeting

The ACRS Subcommittee on U.S. EPR will hold a meeting on April 5, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, April 5, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review (1) Chapter 6 of the Safety Evaluation Report (SER) with open items associated with U.S. EPR Design Control Document (DCD) and (2) Chapter 6 of the SER with Open Items associated with the Calvert Cliffs, Unit 3, Reference Combined License Application (RCOLA). The Subcommittee will hear presentations by and hold discussions with representatives of AREVA Inc., Unistar, the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: March 17, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–6828 Filed 3–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR); Notice of Meeting

The ACRS Subcommittee on ABWR will hold a meeting on April 6, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

April 6, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review Chapters 10 and 14 of the Safety Evaluation Report (SER) with no open items associated with the Combined License Application for South Texas Project (STP) Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with Innovation North America, the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or E-mail: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the Designated Federal Official thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Designated Federal Official one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: March 17, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–6834 Filed 3–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of March 21, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of March 21, 2011

Monday, March 21, 2011

9 a.m. Briefing on NRC Response to Recent Nuclear Events in Japan (Public Meeting) (Contact: Office of Public Affairs, 301–415–8200).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 15, 2011, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Briefing on NRC Response to Recent Nuclear Events in Japan be held with less than one week notice to the public. The meeting is scheduled on March 21, 2011.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, *TDD:* 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: March 18, 2011.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2011–6960 Filed 3–21–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0064]

Prohibiting Exports Involving Libya by Executive Order

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing notice to all general and specific licensees of an Executive Order that prohibits any nuclear exports involving the Government of Libya.

FOR FURTHER INFORMATION CONTACT: Grace Kim, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–3605, *e-mail: Grace.Kim@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Exports Involving the Government of Libya Suspended by Executive Order

Under an Executive Order issued by the President on February 25, 2011, the transfer from the United States or by any United States person of any product involving the Government of Libya is now legally prohibited unless authorized by the Department of Treasury's Office of Foreign Assets Control (OFAC) or exempt from the scope of the Executive Order. The Executive Order may be found at the following link: *http://www.whitehouse.gov/the-press-office/2011/02/25/executive-order-libya*

The Executive Order also prohibits transactions involving specific individuals, such as Muammar Qadhafi and his children. The names of these designated persons are included in the

OFAC list of Specially Designated Nationals and Blocked Persons, which is available at: *http://www.treasury.gov/resource-center/sanctions/SDN–List/Pages/default.aspx.*

The Executive Order applies to U.S. exports of nuclear items involving the Government of Libya or designated persons, regardless of whether such exports are otherwise authorized under NRC general or specific licenses. Exporters who seek to export nuclear items to Libya or to designated persons under specific or general NRC licenses should contact OFAC regarding the applicability of the Executive Order to the proposed nuclear exports and the availability of OFAC authorization for such exports.

Dated at Rockville, Maryland, this 17th day of March 2011.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Director, Office of International Programs.

[FR Doc. 2011–6891 Filed 3–22–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–63; Order No. 697]

Mail Classification Change for Priority Mail Flat Mail

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to provide Forever postage on Priority Mail Flat Rate packaging . This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* March 23, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On March 15, 2011, the Postal Service filed notice with the Commission of changes in rates of general applicability and concomitant classification changes for a competitive product pursuant to 39 CFR 3015.2.[1] The proposed changes establish classification changes to enable Forever postage on Priority Mail Flat Rate packaging within the Priority Mail product. The change is scheduled to go into effect April 17, 2011.

The Forever postage on Priority Mail Flat Rate packaging proposal will allow the Postal Service to offer bundles of Priority Mail packaging that have prepaid mailing labels affixed for the following types of packaging: (1) Priority Mail Flat Rate Envelopes—Regular, Legal, Padded, and (2) Priority Flat Rate Boxes—Small, Medium (2 styles), Large. The Forever Prepaid Flat Rate Packaging will be available for purchase in 3, 5, 10, and 25 count packs. There will be two components of this offering: The online model and the retail model. The online model will allow customers to purchase packs from a Web site. The retail model will eventually allow retailers to choose which packs they wish to sell and offer those packs in their stores directly to their customers.

The Postal Service includes five attachments with its Notice in support of Forever postage on Priority Mail Flat Rate packaging:

- Decision of the Governors of the United States Postal Service on Establishment of Rate and Class of General Applicability for Forever Prepaid Flat Rate Packaging for Priority Mail (Governors' Decision No. 11–4);
- Management Analysis of Forever Prepaid Flat Rate Packaging for Priority Mail;
- Certification of Governors' Vote in the Governors' Decision No. 11–4; and
- Proposed Mail Classification Schedule language.

The Commission establishes Docket No. CP2011–63 for consideration of matters related to the proposed classification changes to enable Forever postage on Priority Mail Flat Rate packaging as identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's Notice is consistent with the policies of 39 U.S.C. 3632, 3633 and 3642 as well as 39 CFR parts 3015 and 3020. Comments are due no later than March 23, 2011. The Postal Service's Notice can be accessed via the Commission's Web site (*http://www.prc.gov*).

[1] Notice of the United States Postal Service of Changes in Rates of General Applicability for a Competitive Product, Established in Governors' Decision No. 11–4, March 15, 2011 (Notice).

The Commission appoints William C. Miller to serve as Public Representative in the captioned proceeding.

It is ordered:

1. The Commission establishes Docket No. CP2011–63 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than March 23, 2011.

3. Pursuant to 39 U.S.C. 505, William C. Miller is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–6784 Filed 3–22–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–64; Order No. 698]

Parcel Select Price and Classification Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice of rate and classification changes affecting Parcel Select. The Postal Service seeks to implement new prices for Parcel Select for forwarding and return to sender. This notice informs the public of the filing, addresses preliminary procedural matters, and invites public comment.

DATES: *Comments are due:* March 24, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On March 16, 2011, the Postal Service filed notice with the Commission of changes in rates of general applicability and concomitant classification changes for a competitive product pursuant to 39 CFR 3015.2.[1] The Postal Service seeks to implement new prices for Parcel Select for forwarding and return to sender. The fee would be the applicable Parcel Select Barcoded Nonpresort prices, plus $3.00, for each Parcel Select forward or return. The proposed new prices will allow the Postal Service to more closely align with its competitors' charges.

The Postal Service includes six attachments with its Notice in support of its proposal to add new prices:

- Decision of the Governors of the United States Postal Service on Establishment of Rate and Class of General Applicability for Parcel Select Forwarding and Return to Sender (Governors' Decision No. 11–5);
- Management Analysis of Parcel Select Forwarding and Return to Sender;
- Certification of Governors' Vote in the Governors' Decision No. 11–5;
- Cost coverage analysis;
- Proposed Mail Classification Schedule language; and
- Application of the United States Postal Service for Non-Public Treatment of Materials. An unredacted copy of certain materials also has been filed with the Commission.

The Commission establishes Docket No. CP2011–64 for consideration of matters related to the proposed new prices identified in the Notice.

Interested persons may submit comments on whether the Postal Service's Notice is consistent with the policies of 39 U.S.C. 3632, 3633 and 3642 as well as 39 CFR parts 3015 and 3020. Comments are due no later than March 24, 2011. The Postal Service's Notice can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints William C. Miller to serve as Public Representative in the captioned proceeding.

It is ordered:

1. The Commission establishes Docket No. CP2011–64 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than March 24, 2011.

3. Pursuant to 39 U.S.C. 505, William C. Miller is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–6797 Filed 3–22–11; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Changes in Rates of General Applicability for a Competitive Product, Established in Governors' Decision No. 11–5, March 16, 2011 (Notice).

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:

Regulation S–X, SEC File No. 270–3, OMB Control No. 3235–0009.

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.

Information collected and information prepared pursuant to Regulation S–X focus on the form and content of, and requirements for, financial statements filed with periodic reports and in connection with the offer and sale of securities. Investors need reasonably current financial statements to make informed investment and voting decisions.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) or the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*).

Regulation S–X specifies the form and content of financial statements when those financial statements are required to be filed by other rules and forms under the Federal securities laws. Compliance burdens associated with the financial statements are assigned to the rule or form that directly requires the financial statements to be filed, not to Regulation S–X. Instead, an estimated burden of one hour traditionally has been assigned to Regulation S–X for incidental reading of the regulation. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 17, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6810 Filed 3–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 609 and Form SIP; SEC File No. 270–23; OMB Control No. 3235–0043.

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 for Rule 609 (17 CFR 242.609) (formerly Rule 11Ab2–1) and Form SIP (17 CFR 249.1001), titled

"Registration of securities information processors: form of application and amendments".

On September 23, 1975, the Commission adopted Rule 11Ab2–1 and Form SIP under the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*) to establish the procedures by which Securities Information Processor ("SIP") files and amends their SIP registration statements.[1] Under Regulation NMS Rule 11Ab2–1was redesignated as Rule 609.[2] The information filed with the Commission pursuant to Rule 609 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is a SIP that engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effective or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The Federal securities laws require that before the commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission; The Securities Information Automation Corporation ("SIAC") and The Nasdaq Stock Market, LLC ("Nasdaq"). SIAC and Nasdaq are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information.

Accordingly, the annual reporting and recordkeeping burden for Rule 609 and Form SIP is 400 hours; the burden of information collection is estimated to involve approximately 1 respondent application for registration making 1 response per year. This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 609 on Form SIP a year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 17, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6809 Filed 3–22–11; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Securities Exchange Act Release No. 11673 (September 23, 1975), 40 FR 45422 (October 2, 1975).

[2] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Heli Electronics Corp., Order of Suspension of Trading

March 21, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Heli Electronics Corp. ("HELI"), a Nevada corporation with headquarters and operations in the People's Republic of China, which trades in the over-the-counter market under the symbol "HELI."

Questions have arisen regarding the accuracy and completeness of information contained in HELI's public filings with the Commission concerning, among other things, the company's cash balances and accounts receivable. The company has failed to disclose that the company's independent auditor has resigned due to accounting irregularities involving (a) discrepancies between HELI's accounting records for cash balances and official bank statements obtained by the auditors from the company's bank, (b) discrepancies concerning the existence and location of company customers, and (c) the possibility that accounting records could have been falsified. Due to these irregularities, the company's auditor has resigned from its engagement to audit the company's consolidated financial statements for the year ended December 31, 2010, and has withdrawn its audit opinion issued June 15, 2010 relating to the audit of the company's consolidated financial statements as of December 31, 2009 and 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, March 21, 2011, through 11:59 p.m. EDT, on April 1, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–6943 Filed 3–21–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64090; File No. SR–BX–2011–007]

Self-Regulatory Organizations; NASDAQ OMX BX LLC; Order Approving a Proposed Rule Change Relating to Permanent Approval of the BX and NES Inbound Routing Relationship

March 17, 2011.

I. Introduction

On January 28, 2011, NASDAQ OMX BX LLC ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change requesting permanent approval of the Exchange's pilot program to permit the Exchange to accept inbound orders that Nasdaq Execution Services, LLC ("NES") routes in its capacity as a facility of The NASDAQ Stock Market LLC ("Nasdaq"), with certain obligations and conditions. The proposed rule change was published for comment in the **Federal Register** on February 14, 2011.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

BX Equity Rule 2140(a) prohibits the Exchange or any entity with which it is affiliated from acquiring or maintaining an ownership interest in a member in the absence of an effective filing under Section 19(b) of the Act.[4] NES is a broker-dealer that is a member of the Exchange, and currently provides to Nasdaq members optional routing services to other market centers. NES is owned by The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), which also owns three registered securities exchanges—Nasdaq, the Exchange, and NASDAQ OMX PHLX LLC.[5] Thus, NES is an affiliate of each of these exchanges. Absent an effective filing, BX Equity Rule 2140(a) would prohibit NES from being a member of the Exchange.

On August 7, 2008, in connection with the acquisition of the Exchange by NASDAQ OMX, the Commission, approved an affiliation between the Exchange and NES for the limited purpose of permitting NES to provide routing services for Nasdaq for orders that first attempt to access liquidity on Nasdaq's system before routing to the Exchange, subject to certain other limitations and conditions.[6] At the time of NASDAQ OMX's acquisition of the Exchange, the Exchange was not trading equity securities.[7] On December 23, 2008, in connection with the Exchange's resumption of equity trading, the Commission approved a modification to the conditions for the affiliation between NES and the Exchange, to permit the Exchange to receive orders routed by NES in its capacity as a facility of Nasdaq (including "Directed Orders"),[8] on a one-year pilot basis.[9] The Exchange is now proposing to make such approval permanent.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

NES operates as a facility of Nasdaq that provides outbound routing from Nasdaq to other market centers, subject to certain conditions.[14] NES's operation as a facility providing outbound routing services for Nasdaq is subject to the conditions that: (1) NES is operated and regulated as a facility of Nasdaq; (2) NES only provides outbound routing services unless otherwise approved by the Commission; (3) the designated examining authority of NES is a self-regulatory organization unaffiliated with Nasdaq; and (4) the use of NES for outbound routing is available only to Nasdaq members and the use of NES remains optional.[15]

The operation of NES as a facility of Nasdaq providing outbound routing services from that exchange will be subject to Nasdaq oversight, as well as Commission oversight. Nasdaq will be responsible for ensuring that NES's outbound routing function is operated consistent with Section 6 of the Act and Nasdaq rules. In addition, Nasdaq must file with the Commission rule changes and fees relating to NES's outbound routing function.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the Exchange.[16] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously proposed, and the Commission approved,[17] NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of Nasdaq, subject to the following limitations and conditions, which the Exchange states it has met:[18]

- First, the Exchange and FINRA will enter into a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act ("17d–2 Agreement").[19] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[20] Pursuant to the Regulatory Contract, however, BX

[3] *See* Securities Exchange Act Release No. 63859 (February 7, 2011), 76 FR 8391 ("Notice").

[4] 15 U.S.C. 78s(b).

[5] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) ("BSE Approval Order"). *See also* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving NASDAQ OMX's acquisition of Phlx.)

[6] *See* BSE Approval Order, *supra* note 5.

[7] *See* BSE Approval Order, *supra* note 5, 73 FR at 46944, n.117.

[8] Nasdaq Rule 4751(f)(9) defines Directed Orders as immediate-or-cancel orders that are directed to an exchange other than Nasdaq without checking the Nasdaq book.

[9] *See* Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) ("BSE Inbound Routing Order").

[10] *See* Notice, *supra* note 3.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Nasdaq Rule 4758. *See also* Notice, *supra* note 3, 76 FR at 8301, n.5.

[15] *Id. See also* BSE Inbound Routing Order, *supra* note 9, 73 FR at 80475.

[16] *See* BSE Approval Order, *supra* note 5, 73 FR at 46944.

[17] *See* BSE Inbound Routing Order, *supra* note 9, 73 FR at 80475.

[18] *See* Notice, *supra* note 3, 73 FR at 8391–8392.

[19] 17 CFR 240.17d–2.

[20] The Exchange also states that NES is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Notice, *supra* note 3, 76 FR at 8391, n.9.

retains ultimate responsibility for enforcing its rules with respect to NES.

• Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[21]

• Third, FINRA will provide a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.[22]

• Fourth, the Exchange has adopted BX Equity Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.[23]

• Fifth, routing of orders from NES to the Exchange, in NES's capacity as a facility of Nasdaq, was authorized for a pilot period of twelve months.[24]

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, and has demonstrated that NES cannot use any information advantage it may have because of its affiliation with the Exchange.[25]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[26] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to NES's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NES,[27] combined with FINRA's monitoring of NES's compliance with the equity trading rules and quarterly reporting to the Exchange's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NES. The Commission also believes that BX Equity Rule 2140(c) is designed to ensure that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–BX–2011–007) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6785 Filed 3–22–11; 8:45 am]

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[21] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of Nasdaq routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, *supra* note 3, 76 FR at 8391, n.10

[22] *See* Notice, *supra* note 3, 76 FR at 8392.

[23] *See* BX Equity Rule 2140(c). *See also* Notice, *supra* note 3, 76 FR at 8392.

[24] *See* Notice, *supra* note 3, 76 FR at 8392. The Commission notes that the original pilot period of twelve months was approved and began on December 23, 2008, but was extended several times. *See* Notice, *supra* note 3, 76 FR at 8391, n.6 and accompanying text.

[25] *See* Notice, *supra* note 3, 76 FR at 8392.

[26] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[27] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64091; File No. SR–ISE–2011–04]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change To Establish New Classes of Market Makers for Index Options

March 17, 2011.

I. Introduction

On January 12, 2011, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to establish two new classes of market makers for index options traded on the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 31, 2011.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend its rules to establish the following new classes of market makers for certain index options traded on the Exchange: Index Options Primary Market Makers ("IXPMM") [4] and Index Options Competitive Market Makers ("IXCMM"),[5] collectively referred to as IXMMs.

The Exchange's proposal to separate out and introduce a new class of market maker trading licenses that are specific to index options is intended to allow an opportunity for additional market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63761 (January 25, 2011), 76 FR 5412 ("Notice").

[4] An IXPMM is defined in new ISE Rule 2013(a) as a primary market maker in Eligible Index Options traded on the Exchange pursuant to new ISE Rule 2013.

[5] An IXCMM is defined in new ISE Rule 2013(a) as a competitive market maker in Eligible Index Options traded on the Exchange pursuant to new ISE Rule 2013.

participants, who are not currently maker makers on the Exchange's First Market, to trade new index options as index-specific market makers.[6]

Because the Exchange's proposal primarily focuses on newly-listed index products, the proposal describes how the existing 28 cash-settled indexes traded on the Exchange will be treated. Specifically, index options listed on the Exchange prior to December 31, 2010 ("Legacy Index Options") already have an PMM assigned. The proposal does not affect those assignments, and such PMMs will simply continue to function as PMMs (*i.e.,* as an IXPMM) in its currently-assigned index option(s). In addition, except as provided above, the proposal provides that all current and future First Market PMMs and CMMs may trade (as an IXCMM) all existing and future index products, including both Legacy Index Options and Eligible Index Options without having to purchase a separate IXCMM trading license. Market participants that are not currently a PMM or CMM on the Exchange's First Market will be required to purchase a new IXMM license in order to trade in index options on the Exchange.[7]

Eligible Index Options. New ISE Rule 2013(c) defines "Eligible Index Options" as: (i) Index options that have a 6-month average daily volume of less than 10,000 contracts in the US market; and (ii) index options that have a trading history of less than 6 months, in which case the eligibility threshold would be prorated proportionately over the time that an index was listed in the US market.[8] Prior to the listing of an Eligible Index Option, the Exchange will conduct a one-time eligibility test to determine whether an index product is an Eligible Index Option. The Exchange will conduct the eligibility test when an index product is qualified for listing under ISE rules and prior to its certification with the Options Clearing Corporation.[9] The following index products are *not* Eligible Index Options: Russell 2000 Index ("RUT"), the NASDAQ–100 Index ("NDX"), and the Mini-NASDAQ–100 Index ("MNX").[10]

Legacy Index Options. ISE defines Legacy Index Options as index options listed on the Exchange prior to December 31, 2010.[11] New ISE Rule 2013(c)(3) provides that the current First Market PMM that has an allocation as PMM in a particular Legacy Index Option will be deemed to be the IXPMM for Legacy Index Options and, accordingly, will not need to purchase an IXPMM license to continue to trade as an IXPMM in that Legacy Index Option. In the event a Legacy Index Option is de-listed and subsequently re-listed, ISE will allocate the IXPMM license for that index through the auction process described in Rule 2013.[12]

There will be one IXPMM per each Eligible Index Option and Legacy Index Option.[13] IXPMM trading licenses shall be permanently granted as long as the IXPMM meets its stated market quality commitments.[14] By contrast, all IXCMM trading licenses will be for a term of one year.

Allocations Generally. Traditionally, new index products on the Exchange have been allocated as part of the general allocation to ISE's "First Market," which is the general market for higher-volume equity, ETF and index options. The Exchange states that it will offer IXMM trading licenses in a manner similar to how it offers foreign currency ("FX") options trading licenses to FX market makers.[15] IXPMM allocations will be based on the same methodology ISE currently uses for FXPMMs in its FX products, which is based, in part, on market quality commitments.

IXPMM Allocations for Eligible Index Options. Current and future First Market PMMs/CMMs may acquire an IXPMM trading license by participating in an auction, which involves the submission of a monetary bid and market quality commitments.

IXPMM trading licenses will be sold by means of a sealed bid auction conducted by the Exchange. A separate auction would be conducted for each index option for which ISE seeks to allocate an IXPMM. The "winning" bid at which an IXPMM trading license is sold is referred to as the "Auction Price." Together with its bid, a member seeking an IXPMM trading license must provide, at a minimum, market quality commitments regarding: (1) The average quotation size it will disseminate in an Eligible Index Option; and (2) the maximum quotation spread it will disseminate in such product at least 90% of the time. At the end of the auction, the Exchange will determine the winning bidder for an IXPMM trading license based on bid amount and market quality commitment, and may reject a bid if the Exchange deems a market quality commitment to be unrealistic or significantly inferior to market quality commitments submitted by other bidding members. In an auction for a trading right for an Eligible Index Option, ISE will give preferred consideration to a First Market PMM/CMM where bid and quality commitments are equal to those submitted by a new member who is not a First Market PMM/CMM.

Once allocated, the IXPMM may change its market quality commitment only to the extent that the new commitments are an improvement to its existing commitment. Under new Rule 2013(e)(4), the Exchange will review and assess market quality commitments on a quarterly basis to ensure IXPMMs are in compliance with their stated commitments. At the discretion of the Exchange and subject to the procedural protections provided under the rules of the Exchange,[16] failure to meet stated commitments may result in ISE terminating an allocation and conducting an auction to reallocate the failing IXPMM's index option.[17]

IXCMM Allocations. Current and future First Market PMMs may request, and if requested will be allocated, an IXCMM trading license without having to pay any additional fee. A member who is not a First Market PMM/CMM will be required to purchase an IXCMM trading license to trade as an IXCMM on the Exchange. IXCMM trading licenses will be available for purchase at any

[6] *See* Notice, *supra* note 3, 76 FR at 5412. An IXMM license, by itself, would not allow the holder thereof to trade in equity or ETF options traded on the Exchange.

[7] IXMM trading licenses will not represent ownership of any equity interest in the Exchange.

[8] For example, if an index has a trading history for just three months in the US market, the prorated eligibility threshold applied by ISE would be 20,000 ADV.

[9] The Exchange currently follows this process with regards to the listing of all equity (including ETF) and index option products traded on the Exchange.

[10] *See* new ISE Rule 2013(c)(2).

[11] As of December 31, 2010, the following indexes are Legacy Index Options: Mini FTSE 100 (symbol, UKX); ISE Semiconductors (BYT); ISE Electronic Trading (DMA); ISE-Revere Natural Gas (FUM); ISE Water (HHO); ISE Homeland Security (HSX); ISE Long Gold (HVY); ISE 250 (IXZ); ISE U.S. Regional Banks (JLO); ISE Oil and Gas Services (OOG); ISE Integrated Oil and Gas (PMP); ISE Bio-Pharmaceuticals (RND); ISE Homebuilders (RUF); ISE SINdex (SIN); ISE Nanotechnology (TNY); ISE Revere Wal-Mart Supplier (WMX); KBW Bank Index (BKX); KBW Mortgage Finance Index (MFX); Morgan Stanley Technology Index (MSH); Morgan Stanley Retail Index (MVR); Nasdaq Q–50 Index (NXTQ); Mini-Russell 2000 (RMN); Russell 1000 Index (RUI); S&P Mid Cap 400 Index (MID); Standard & Poor's Small Cap 600 Index (SML).

[12] In other words, the delisting of a Legacy Index Option terminates its status as a Legacy Index Option for purposes of new ISE Rule 2013.

[13] *See* new ISE Rule 2013(c)(3) and (e)(1).

[14] *See* new ISE Rule 2013(e)(1). The Board or designated committee, however, may suspend or terminate any trading license of a market maker whenever, in the Board's or designated committee's judgment, the interests of a fair and orderly market are best served by such action. *See* new ISE Rule 2013(e)(1).

[15] *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963, 17964 (April 10, 2007) (SR–ISE–2006–59).

[16] *See* Chapter 17 of ISE Rules.

[17] *See supra* note 14.

time during a calendar year.[18] All IXCMM trading licenses will expire at the end of the calendar year in which they are issued but, upon request by a PMM or CMM, will be renewed for subsequent years on an annual basis.[19]

IXMM Duties and Privileges. By amending ISE Rule 802(b) to permit the allocation of Eligible Index Options, subject to new Rule 2013, ISE is subjecting market makers in Eligible Index Options to the obligations imposed on Exchange market makers under Chapter 8 of the Exchange's rules. Accordingly, once an IXPMM obtains a trading license in an Eligible Index Option, the IXPMM will have all of the responsibilities and privileges of a PMM under the Exchange's rules.[20] Similarly, once an IXCMM obtains a trading license in an Eligible Index Option, the IXCMM will have all the responsibilities and privileges under the Exchange's rules.

After an IXPMM has purchased a trading license, the IXPMM may terminate its status as IXPMM in an index option if the IXPMM is unable to meet its obligations, provided the IXPMM gives at least 60 days prior written notice to the Exchange of such termination. In the event the Exchange is unable to re-allocate the IXPMM's index option product within the notice period and the index option product is *singly listed* on ISE, then the IXPMM will be required to continue to fulfill its obligations in that product until all open interest has been closed. An IXCMM may terminate its trading license prior to its scheduled expiration by providing at least 10 days prior written notice to the Exchange.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the provisions governing the two new classes of market makers that will be permitted to trade Eligible Index Options and Legacy Index Options on the Exchange, IXPMMs and IXCMMs, are consistent with the Act. The Commission notes that IXPMMs and IXCMMs will be subject to identical obligations that correspond to the market making obligations applicable to First Market PMMs and CMMs, respectively.[22] The Commission notes that, to obtain a trading license, IXPMMs will be required to provide the Exchange with market quality commitments [23] and, if an IXPMM continuously fails to meet its stated market quality commitments, the Exchange may terminate its IXPMM allocation.[24]

The Commission believes that the procedures under which the Exchange proposes to offer IXMM licenses are reasonably designed to award such allocations in a fair and reasonable manner. In particular, the Commission believes that provisions governing IXCMM trading licenses are designed to ensure that market maker trading licenses will be widely available because the Exchange will make an unlimited amount of IXCMM licenses available for purchase by members who are not PMMs or CMMs on the Exchange's First Market.[25] In addition, the requirement that bidders provide market quality commitment in addition to their bid for an IXPMM allocation will allow the Exchange to grant IXPMM trading licenses in an objective manner without awarding a trading license solely based on the highest bid.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–ISE–2011–04) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6786 Filed 3–22–11; 8:45 am]

BILLING CODE 8011–01–P

[18] IXCMM trading licenses sold during a calendar year will be prorated to reflect the number of trading days in the year. *See* new ISE Rule 2013(f)(2).

[19] *See* Notice, *supra* note 3, 76 FR at 5414.

[20] For example, IXPMMs will enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in an Eligible Index Option for which it has been allocated, to conducting the opening rotation on a daily basis for as long as the IXPMM retains an allocation in an Eligible Index Option.

[21] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] *See supra* note 20.

[23] *See* new ISE Rule 2013(e)(3).

[24] *See* new ISE Rule 2013(e)(4).

[25] *See* new ISE Rule 2013(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64095; File No. SR–EDGX–2011–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by EDGX Exchange, Inc. To Delete the Description of and All References to Step-Up Orders in EDGX Rules

March 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2011, EDGX Exchange, Inc. ("EDGX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules 11.5(c)(11) and Rule 11.9(b)(1)(C) to delete the description of and all references to Step-Up orders. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http:/www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

EDGX filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend EDGX Rule 11.9 regarding the description of the Step-up order type and modify how Step-up orders would be processed pursuant to Exchange Rule 11.9.[3]

Exchange Rule 11.5(c)(11) defines a Step-up order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)." Exchange Rule 11.9(b)(1)(C), in turn, states that orders shall be displayed to Users[4] in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed five hundred milliseconds, as determined by the Exchange.

In light of the Commission's order instituting proceedings to determine whether to disapprove the above-referenced proposed rule change,[5] the Exchange withdrew the filing mentioned above on February 25, 2011 and ceased offering the Step-up order as of the close of business on February 28, 2011.

The Exchange now proposes to delete rules that reference Step-up orders. Therefore, it is proposing to delete Rules 11.5(c)(11) and 11.9(b)(1)(C). As a result, conforming changes have been made to re-number current Rules 11.5(c)(12)–(14) as Rules 11.5(c)(11)–(13). In addition, a conforming change is proposed to re-number the reference to Discretionary Orders, as set forth in Rule 11.8(a)(2)(D).

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act of,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the Step-up order type was an enhanced functionality offered by the Exchange not required under the Act, the Exchange would like to remove references to it from its rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2011–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–06 and should be submitted on or before April 13, 2011.

V. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market a national market system, and in general, to protect investors and

[3] *See* Securities Exchange Act Release No. 63336 (November 18, 2010, 75 FR 71781. Amendment No. 2 replaced in its entirety the original filing, SR–EDGX–2010–17 (November 8, 2010) and partial Amendment No. 1 (November 23, 2010). *See* Securities Exchange Act Release No. 63574 (December 17, 2010), 75 FR 80876.

[4] Exchange Rule 1.5(cc) defines a User as any "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

[5] *See* Securities Exchange Act Release No. 63930 (February 18, 2011), 76 FR 10414 (SR–EDGX–2010–17).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

the public interest. The Commission agrees with the Exchange that the Step-Up order type is a functionality that is not required under the Act.[9]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. Accelerated approval will allow the Exchange to delete references to an order type in its rules that is not required under the Act and that the Exchange has determined to discontinue.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–EDGX–2011–06) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6837 Filed 3–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64094; File No. SR–EDGA–2011–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by EDGA Exchange, Inc. To Delete the Description of and All References to Step-Up Orders in EDGA Rules

March 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2011, EDGA Exchange, Inc. ("EDGA" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules 11.5(c)(11) and Rule 11.9(b)(1)(C) to delete the description of and all references to Step-Up orders. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

EDGA filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend EDGA Rule 11.9 regarding the description of the Step-up order type and modify how Step-up orders would be processed pursuant to Exchange Rule 11.9.[3]

Exchange Rule 11.5(c)(11) defines a Step-up order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)." Exchange Rule 11.9(b)(1)(C), in turn, states that orders shall be displayed to Users[4] in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed five hundred milliseconds, as determined by the Exchange.

In light of the Commission's order instituting proceedings to determine whether to disapprove the above-referenced proposed rule change,[5] the Exchange withdrew the filing mentioned above on February 25, 2011 and ceased offering the Step-up order as of the close of business on February 28, 2011.

The Exchange now proposes to delete rules that reference Step-up orders. Therefore, it is proposing to delete Rules 11.5(c)(11) and 11.9(b)(1)(C). As a result, conforming changes have been made to re-number current Rules 11.5(c)(12)–(14) as Rules 11.5(c)(11)–(13). In addition, a conforming change is proposed to re-number the reference to Discretionary Orders, as set forth in Rule 11.8(a)(2)(C).

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the Step-up order type was an enhanced functionality offered by the Exchange not required under the Act, the Exchange would like to remove references to it from its rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

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[9] *See* supra Section II.A.2.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63335 (November 18, 2010, 75 FR71783. Amendment No. 2 replaced in its entirety the original filing, SR–EDGA–2010–18 (November 8, 2010) and partial Amendment No. 1 (November 23, 2010). *See* Securities Exchange Act Release No. 63572 (December 17, 2010), 75 FR 80873.

[4] Exchange Rule 1.5(cc) defines a User as any "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

[5] *See* Securities Exchange Act Release No. 63929 (February 18, 2011), 76 FR10416 (SR–EDGA–2010–18).

[6] 15 U.S.C. 78f(b)(5).

organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–07 and should be submitted on or before April 13, 2011.

V. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market a national market system, and in general, to protect investors and the public interest. The Commission agrees with the Exchange that the Step-Up order type is a functionality that is not required under the Act.[9]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. Accelerated approval will allow the Exchange to delete references to an order type in its rules that is not required under the Act and that the Exchange has determined to discontinue.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–EDGA–2011–07) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–6836 Filed 3–22–11; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* supra Section II.A.2.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket DOT–OST–2010–0260]

Application of Air Charter, Inc. D/B/A Air Flamenco for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2011–3–21), Docket DOT–OST–2010–0260.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Air Charter, Inc. d/b/a Air Flamenco fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than March 31, 2011.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0260 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Scott A. Faulk, Air Carrier Fitness Division (X–56, Room W86–487), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: March 17, 2011.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–6814 Filed 3–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixteenth Meeting: RTCA Special Committee 205/EUROCAE WG–71: Software Considerations in Aeronautical Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE WG–71 meeting: Software Considerations in Aeronautical Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE WG–71: Software Considerations in Aeronautical Systems Agenda for the 16th meeting.

DATES: The meeting will be held April 11–15, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Enea, PO Box 1033, Skalholtsgatan 9, SE–164 21 KISTA, Sweden. Contacts: Joint Secretaries, Europe: Mr. Ross Hannan, Telephone +44 788–074–6650, e-mail: *Ross_hannan@sigma-aerospace.com,* US: Mrs. Leslie A. Alford, *leslie.a.alford@boeing.com.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 205/EUROCAE WG–71, Software Considerations in Aeronautical Systems Agenda for the 16th meeting:

Agenda

Day 1, April 11, 2011

- Open Plenary Session.
- Chairmen's Introductory Remarks.
- Recognition of the FAA and EASA Representatives.
- Review of Meeting Agenda.
- Review and Approval of Fifteenth Meeting Summary, RTCA Paper No. 119–10/SC186–030.
- Acceptance of Documents.
- DO–178C, Software Considerations in Airborne Systems and Equipment Certification.
- DO–278A, Software Considerations for Communication, Navigation, Surveillance and Air Traffic Management (CNS/ATM) Systems.
- DO-xxx, Software Tool Qualification Considerations.
- DO-xxx, Formal Methods Supplement to DO–178C and DO–278A.
- Approve Entry into RTCA Final Review and Comment Process (FRAC).
- DO-xxx, Object-Oriented Technology Supplement to DO–178C and DO–278A.
- DO-xxx, Model-Based Development and Verification Supplement to DO–178C and DO–278A.
- Revision to DO–248B, Clarification of DO–178C and DO–278A.

Day 2, April 12, 2011

- Acceptance of Documents and Approval for Entry into FRAC—continued.

Day 3, April 13, 2011

- Acceptance of Documents and Approval for Entry into FRAC—continued.

Day 4, April 14, 2011

- Acceptance of Documents and Approval for Entry into FRAC—continued.

Day 5, April 15, 2011

- Acceptance of Documents and Approval for Entry into FRAC—continued.
- Closing Remarks.
- Adjourn Plenary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 16, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–6845 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting: RTCA Special Committee 224: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 224 meeting: Airport Security Access Control Systems (Update to DO–230B).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 224: Airport Security Access Control Systems

DATES: The meeting will be held April 13, 2011, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036 in the MacIntosh-NBAA Room and Hilton-ATA Room.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 224, Airport Security Access Control Systems (Update to DO–230B):

Agenda

April 13, 2011

- Welcome/Introductions/Administrative Remarks.
- Review/Approve Summary—Fifth Meeting.
- Report on Security Construction Guidelines Process.
- Final Revision Review—Revised DO–230B.
- Briefing Preparations—Program Management Committee (PMC).
- Plans for Next Version.
- Any Other Business.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 16, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–6843 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA, Army Corps of Engineers (USACE), and Other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA that are final within the meaning of 23 U.S.C. 139(1)(1). The actions relate to a proposed highway project, the WIS 15 Corridor Expansion Project, in the State of Wisconsin. Those actions grant approval for the project. The project will widen the existing two-lane roadway to four travel lanes with a median and construct a northern bypass around the Village of Hortonville, in Outagamie County, Wisconsin. Specific actions include acquiring additional right-of-way, constructing a four-lane bypass, constructing grade separated crossings, constructing a multi-use path, installing new bridges and box culverts, removing and placing fill, removing vegetation, and providing storm water management

measures. The project also includes mitigation and restoration actions which are compatible with land use plans.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed within 180 days of publication of this **Federal Register** notice. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Tracey McKenney, Major Projects Manager, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717; *telephone:* 608–829–7510; and *e-mail: tracey.mckenney@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions by issuing approval for the following highway project: WIS 15 Corridor Expansion Project. The purpose of the project is to improve safety and mobility along the WIS 15 corridor between New London and Greenville, Wisconsin. The actions by FHWA on this project, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) approved on December 28, 2009 [FHWA–WI–EIS–2006–02–F], in the FHWA Record of Decision (ROD) issued October 1, 2010, and in other documents in the FHWA administrative record for the project. The FEIS, ROD, and other documents in the FHWA administrative record are available by contacting FHWA or the Wisconsin Department of Transportation, Northeast Region, Green Bay office at the addresses provided. The FEIS can be viewed and downloaded from the project Web site *http://www.dot.wisconsin.gov/projects/d3/wis15/index.htm.* Copies are also available for review at the following locations:

FHWA, Wisconsin Division Office, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717;

Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, 4802 Sheboygan Ave, Room 451, PO Box 7965, Madison, WI 53707–7965;

Wisconsin Department of Transportation—NE Region, 944 Vanderperren Way, Green Bay, WI 54324–0080.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138,49 U.S.C. 303]; Farmland Protection Policy Act of 1980 [7 U.S.C. 4201–4209], National Trails System Act [16 U.S.C. 1241–1249].

4. *Wildlife:* Endangered Species Act of 1973 [16 U.S.C. 1531–1543 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(c)]; Migratory Bird Treaty Act [16 U.S.C. 760c–760g].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001 *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Americans with Disabilities Act [42 U.S.C. 12101]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100–17];

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1376]; Land and Water Conservation Fund [16 U.S.C. 4601–4 to 4601–11]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act, [42 U.S.C. 4001–4128]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended [42 U.S.C. 9601–9657]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901 *et seq.*].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management as amended by E.O. 12148; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: March 16, 2011.

Tracey McKenney,

Major Projects Manager, Madison Wisconsin.

[FR Doc. 2011–6747 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: April 14, 2011, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call (877) 768–0032, passcode, 4856462 to participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: March 16, 2011.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2011–6995 Filed 3–21–11; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 3, 2010 [FR Doc. 2010–22008].

DATES: Comments must be submitted on or before April 22, 2011.

FOR FURTHER INFORMATION CONTACT: Kil-Jae Hong, NHTSA, 1200 New Jersey Avenue, SE., W52–232, NPO–520, Washington, DC 20590. Ms. Hong's telephone number is (202) 493–0524 and e-mail address is *kil-jae.hong@dot.gov.*

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 575—Consumer Information Regulations (sections 103 and 105) Qualitative Research.

OMB Number: Not Assigned.

Type of Request: Request for public comment on collection of information request.

Abstract: The Energy Independence and Security Act of 2007 (EISA), enacted in December 2007, included a requirement that the National Highway Traffic Safety Administration (NHTSA) develop a consumer information and education campaign to improve consumer understanding of automobile performance with regard to fuel economy, Greenhouse Gases (GHG) emissions and other pollutant emissions; of automobile use of alternative fuels; and of thermal management technologies used on automobiles to save fuel. A critical step in developing the consumer information program is to conduct proper market research to understand consumers' knowledge surrounding these issues, evaluate potential consumer-facing messages in terms of clarity and understand the communications channels in which these messages should be present. The research will allow NHTSA to refine messaging to enhance comprehension and usefulness and will guide the development of an effective communications plan. NHTSA proposes a multi-phased research project to gather the data and apply analyses and results from the project to develop the consumer information program and education campaign.

Affected Public: Passenger vehicle consumers.

Estimated Total Annual Burden: 128.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Gregory A. Walter,

Senior Associate Administrator, Policy and Operations.

[FR Doc. 2011–6849 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–2010–00062]

Consumer Information; Program for Child Restraint Systems; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments; correction.

SUMMARY: NHTSA published in the **Federal Register** of February 25, 2011 a request for comments notice detailing observations from an agency pilot study conducted to determine reasonable conditions for participation in a new consumer information program, as part of the New Car Assessment Program, to help caregivers find a child restraint system ("child safety seat") that fits their vehicle. This document corrects the public comments submission due date.

DATES: Comments should be submitted early enough to ensure that they are received no later than April 26, 2011.

FOR FURTHER INFORMATION CONTACT: For non-legal issues related to the Vehicle-Child Restraint System (CRS) Fit program, you may contact Ms. Jennifer N. Dang, Office of Crashworthiness Standards (*Telephone:* 202–493–0598). For legal issues, you may contact Ms. Deirdre Fujita, Office of Chief Counsel (*Telephone:* 202–366–2992). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: NHTSA published in the **Federal Register** of February 25, 2011 (76 FR 10637), a request for comments notice describing the new consumer information program that will help caregivers find a child restraint system that fits their vehicle. In that document, on page 10637, in the **DATES** section, it states that "comments should be submitted early enough to ensure that they are received no later than March 28, 2011." In that section, change the date from "March 28, 2011" to "April 26, 2011."

Issued on: March 17, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–6729 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Ford Motor Company

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Ford Motor Company's (Ford) petition for an exemption of the C–MAX vehicle line in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with

the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). Ford requested confidential treatment for an attachment it submitted in support of its petition. The agency has addressed Ford's request for confidential treatment by letter dated March 1, 2011.

DATES: The exemption granted by this notice is effective beginning with the 2013 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated January 25, 2011, Ford requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the MY 2013 Ford C–MAX vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the C–MAX vehicle line. Ford will install its Passive Antitheft Electronic Immobilizer System (PATS) on the 2013 C–MAX as standard equipment. Ford stated that it will also offer its Intelligent Access with Push Button Start (IAwPB) antitheft device as optional equipment. Ford stated that both systems are passive, electronic immobilizer devices that use encrypted transponder technology with 28 trillion different possible electronic key codes for the PATS system and 400 million different possible electronic key codes for the IAwPB system. Key components of the PATS antitheft device will include an electronic transponder key, transceiver module, ignition lock, and a passive immobilizer. Key components of the IAwPB device is an electronic keyfob, remote function actuator, body control module, power train control module and a passive immobilizer. Ford stated that its MY 2013 C–MAX vehicle line will also be equipped with several other standard antitheft features common to Ford vehicles, (*i.e.,* counterfeit resistant VIN labels; secondary VINs, hood release inside vehicle, and cabin accessibility through the use of a valid key fob or keycode). Ford further stated that its C–MAX vehicles will also be available with an optional perimeter alarm system. The perimeter alarm system will utilize both an audible and visible alarm if unauthorized access is attempted. Ford's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Ford stated that the devices integration of the transponder into the normal operation of the ignition key assures activation of the system. Ford further stated that both devices are always active and require no other operator action. Specifically, in the PATS device, when the ignition key is turned to the "start" position, the transceiver module reads the ignition key code and transmits an encrypted message from the keycode to the control module, which then determines key validity and authorizes engine starting by sending a separate encrypted message to the powertrain control module (PCM). In the IAwPB device, when the "startstop" button is pressed, the transceiver module reads the key code and transmits an encrypted message from the keycode to the control module to determine validity and authorizes engine starting by sending a separate encrypted message to the body control module, the PEP/RFA module and the PCM. Ford pointed out that in addition to the programmed key, the three modules that must be matched to start the vehicle adds even an additional level of security to the IAwPB device. In both devices, if the codes do not match, the vehicle will be inoperable.

In addressing the specific content requirements of 543.6, Ford provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Ford conducted tests based on its own specified standards. Ford provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

Ford compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Ford stated that it believes that the standard installation of either the PATS device or the IAwPB device would be an effective deterrent against vehicle theft.

Ford stated that it installed the PATS device on all MY 1996 Ford Mustang GT and Cobra models as standard equipment. Ford also stated that the PATS device was extended to the complete Ford Mustang vehicle line as standard equipment in MY 1997. Ford also stated that according to the National Insurance Crime Bureau (NICB) theft statistics, MY 1997 Mustangs installed with the PATS device showed a 70% reduction in theft rate when compared to MY 1995 Mustangs. Ford also stated that the PATS device is currently offered as standard equipment on most of its North American Ford, Lincoln and Mercury vehicles but is offered as optional equipment on its F-series Super Duty pickups, Econoline and Transit Connect vehicle. Ford stated that beginning with MY 2011, the IAwPB device will also be offered as standard equipment on the Lincoln MKT and optionally on the Lincoln MKS, MKX, Ford Taurus, Edge, Explorer, Focus and Fiesta vehicles.

Ford referenced the agency's published theft rate data for the Volvo S60 for comparison purposes because it stated that the Ford C–MAX is a new vehicle and would utilize the PATS and IAwPB systems that would be similar to the Volvo S60 in design and architecture. Ford stated that the Volvo S60's theft rate is lower than the vehicle theft rate for all vehicles in four of the last five calendar years for which published data is available. Specifically, the agency's data show that theft rates for the Volvo S60 for MYs 2006–2008 are 1.3803, 0.6907 and 2.3543 respectively. Using an average of 3 MYs data (2006–2008), the theft rate for the Volvo S60 vehicle line is well below the median at 1.4751. Ford stated that since either the PATS device or the IAwPB device are the primary theft devices on Ford C–MAX vehicles, it believes that theft rates similar to Volvo S60 are likely to continue or improve in the future.

The agency agrees that the device is substantially similar to devices in other vehicle lines for which the agency has already granted exemptions. Based on the evidence submitted by Ford, the agency believes that the antitheft device for the C–MAX vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the

standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Ford has provided adequate reasons for its belief that the antitheft device for the Ford C–MAX vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Ford provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the C–MAX vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Ford decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 17, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–6724 Filed 3–22–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 296X)]

Union Pacific Railroad Company—Abandonment Exemption—in Riverside and San Bernardino Counties, CA

On March 3, 2011, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon 2 segments, totaling 5.0 miles, of the Riverside Industrial Lead in Riverside and San Bernardino Counties, Cal. The northern segment begins at milepost 540.15 near Colton and ends at milepost 543.88 near Riverside (North Segment), a distance of 3.73 miles, of which 2.27 miles are in San Bernardino County and 1.46 miles are in Riverside County. The southern segment begins at milepost 544.56 and extends to the end of the line at milepost 545.83 (South Segment), a distance of 1.27 miles in Riverside County (both segments collectively referred to as the Line). The Line traverses United States Postal Service Zip Codes 92324, 92313, 92507, and 92506.

In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, UP seeks exemption from 49 U.S.C. 10904 (offer of financial assistance (OFA) procedures) and 49 U.S.C. 10905 (public use conditions). In support, UP contends that exemption from these provisions is necessary to ensure that a portion of the underlying right-of-way will be available for conveyance to the California State Road Authority for its Interstate 215 Project. Further, UP states that exemption from these provisions will allow the Interstate 215 Project to avoid costs associated with building a replacement bridge on the North Segment of the Line. These requests will be addressed in the final decision.

UP is not seeking authority to abandon the portion of the Riverside Industrial Lead between the North Segment and the South Segment (from milepost 543.88 to milepost 544.56), a distance of .68 miles (the Remaining Segment). UP states that the Remaining Segment will still be part of the UP railroad system and will continue to serve the shippers on the Remaining Segment with BNSF Railway (BNSF) providing service via a haulage agreement and trackage rights, over a connection to be constructed between the Remaining Segment and a line of railroad owned by the Riverside County Transportation Commission. UP will remain the primary railroad obligated to serve the Remaining Segment.

The Line does not contain Federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 21, 2011.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 12, 2011. Each trail request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 33 (Sub-No. 296X), and must be sent to: (1) Surface

Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 N. Wacker Drive, #1920, Chicago, IL 60606–1718. Replies to the petition are due on or before April 12, 2011.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 16, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–6649 Filed 3–22–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1011 (Sub-No. 1X)]

Northern Lines Railway, LLC—Discontinuance of Service Exemption—in Stearns County, MN

On March 3, 2011, Northern Lines Railway, LLC (NLR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over approximately 7.05 miles of rail line owned by BNSF Railway Company (BNSF) located between milepost 9.16 at Rockville and milepost 16.21 at Cold Spring, in Stearns County, Minn. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 56369 and 56320 and includes the station of Cold Spring.[2]

NLR states that it has been advised by BNSF that the Line does not contain any federally granted rights-of-way. Any documentation in NLR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 21, 2011.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[3]

All filings in response to this notice must refer to Docket No. AB 1011 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before April 12, 2011.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[1] In 2005, NLR was authorized to lease and operate the Line along with other lines. *N. Lines Ry.—Lease and Operation Exemption—Burlington N. and Santa Fe Ry.,* FD 34627 (STB served Jan. 6, 2005).

[2] This proceeding is related to a petition for exemption filed in *BNSF Railway Company—Abandonment Exemption—in Stearns County, Minn.,* AB 6 (Sub-No. 472X). There, pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the **Federal Register** on February 18, 2011 (76 FR 9,634), instituting a proceeding in which BNSF is seeking an exemption to abandon the Line.

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 16, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–6666 Filed 3–22–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a 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 OCC is soliciting comment concerning its information collection titled, "Policy Communications Questionnaire." The OCC also gives notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before April 22, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0226, 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 the 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.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0223, by mail to U.S. Office of

Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. 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.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Policy Communications Questionnaire.

OMB Control Number: 1557–0226.

Description: This information collection provides the OCC with information needed to properly evaluate the effectiveness of the OCC's policy guidance, found in publications such as bulletins, advisories, and the Comptroller's Handbook. The collection focuses on one communications product, issuances known as bank supervision policy guidance.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Responses:

Estimated Frequency of Response: 1 to 2 times annually.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden: 750 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The OCC issued a 60-day **Federal Register** notice on January 6, 2011. 76 FR 821. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: March 17, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2011–6893 Filed 3–22–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a 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 OCC is soliciting comment concerning its information collection titled, "Community Reinvestment Act Regulations."

DATES: Comments must be submitted on or before May 23, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mail Stop 2–3, Attention: 1557–0160, 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.

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.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0160, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Community Reinvestment Act Regulations.

OMB Control Number: 1557–0160.

Description: The Community Reinvestment Act (CRA) requires the Federal banking agencies (Agencies) to assess the record of banks and savings associations in helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.[1] The CRA statute requires the Agencies to issue regulations to carry out its purposes.[2]

Each Agency must provide written CRA evaluations of the institutions they supervise. The public portion of each written evaluation must present the Agency's conclusions with respect to the CRA performance standards identified in its regulations; include the facts and data supporting those conclusions; and contain the institution's CRA rating and the basis for that rating.

The data collection requirements in the CRA regulations are necessary for the Agencies to examine, assess, and assign a rating to an institution's CRA performance and to prepare the public section of the written CRA performance evaluation.

Type of Review: Regular review.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,441.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 109,835 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

[1] 12 U.S.C. 2903.

[2] 12 U.S.C. 2905.

matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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 the information to the OCC.

Dated: March 17, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2011–6853 Filed 3–22–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning a renewal of an existing collection titled "Customer Complaint Form."

DATES: You should submit written comments by: May 23, 2011.

ADDRESSES: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0232, 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 can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. 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.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0232, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202)874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is requesting comment on the following proposed information collection:

Title: Customer Complaint Form.

OMB Control No.: 1557–0232.

Description: The customer complaint form was developed as a courtesy for those that contact the Office of the Comptroller of the Currency's Customer Assistance Group and wish to file a formal, written complaint. The form allows consumers to focus their issues and provide a complete picture of their concerns, but is entirely voluntary. It is designed to prevent having to go back to a consumer for additional information, which delays the process. Completion of the form allows the Customer Assistance Group to process the complaint more efficiently. The Customer Assistance Group will use the information to create a record of the consumer's contact, including capturing information that can be used to resolve the consumer's issues and provide a database of information that is incorporated into the OCC's supervisory process.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 80,000.

Total Annual Responses: 80,000.

Frequency of Response: On occasion.

Total Annual Burden Hours: 6,640.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: March 17, 2011.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 2011–6851 Filed 3–22–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

General Reporting and Recordkeeping by Savings Associations and Savings and Loan Holding Companies

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

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before May 23, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related

index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Josephine Battle on (202) 906–6870, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: General Reporting and Recordkeeping by Savings Associations and Savings and Loan Holding Companies.

OMB Number: 1550–0011.

Form Number: N/A.

Description: This information collection relates to reports and records required by the following regulations: 12 CFR 552.11 (books and records, federal stock associations), 12 CFR 545.96(c) (agency business records, federal stock associations), 12 CFR 544.8 (communications between members of a federal mutual savings association), 12 CFR 562.1 (regulatory reporting requirements, each savings association and its affiliates), 12 CFR 563.1 (chartering documents, each savings association), 12 CFR 563.47(e) (pension plans, each savings association or service corporation), 12 CFR 572.6(b) (standard flood hazard determination form, each savings association), 12 CFR 562.4 (audit of savings association, savings and loan holding company, or affiliate), 12 CFR 563.76(c) (offers and sales of securities of a savings association or its affiliates in any office of the savings association), 12 CFR 584.1(f) (books and records of each savings and loan holding company), 12 CFR part 226 (Regulation Z, truth in lending), 12 CFR part 202 (Regulation B, Equal Credit Opportunity Act), 12 CFR part 205 (Regulation E, electronic fund transfers), and 12 CFR part 213 (Regulation M, consumer leasing).

Savings associations use the reports and records that the regulations require for internal management control purposes and examiners use them to determine whether savings associations are being operated safely, soundly, and in compliance with regulations. An absence of the reporting and record keeping requirements would not allow for prudent internal controls or for examiners to determine the accurate performance and condition of savings associations. Specifically, OTS examiners use the reports and record keeping requirements to determine whether the savings associations are being operated safely, soundly, and in compliance with regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 741.

Estimated Frequency of Response: On occasion and annually.

Estimated Total Burden: 3,623,349 hours.

Dated: March 17, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–6753 Filed 3–22–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (DBQs—Group 2)]

Proposed Information Collection (Disability Benefits Questionnaires—Group 2) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to obtain medical evidence to adjudicate a claim for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 23, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900—New (DBQs—Group 2)" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Arteries and Veins Conditions (Vascular Diseases including Varicose Veins) Disability Benefits Questionnaire, VA Form 21–0960A–2.
b. Hypertension Disability Benefits Questionnaire, VA Form 21–0960A–3.
c. Non-ischemic Heart Disease (including Arrhythmias and Surgery) Disability Benefits Questionnaire, VA Form 21–0960A–4.
d. Diabetic Peripheral Neuropathy (Diabetic Sensory-Motor Peripheral Neuropathy) Disability Benefits Questionnaire, VA Form 21–0960C–4.
e. Diabetes Mellitus Disability Benefits Questionnaire, VA Form 21–0960E–1.
f. Scar/Disfigurement Disability Benefits Questionnaire, VA Form 21–0960F–1.
g. Skin Diseases Disability Benefits Questionnaire, VA Form 21–0960F–2.
h. Amputations Disability Benefits Questionnaire, VA Form 21–0960M–1.
i. Ankle Conditions Disability Benefits Questionnaire, VA Form 21–0960M–2.
j. Elbow and Forearm Conditions Disability Benefits Questionnaire, VA Form 21–0960M–4.
k. Flatfoot (PES PLANUS) Disability Benefits Questionnaire, VA Form 21–0960M–5.
l. Foot Miscellaneous (other than flatfoot/PES PLANUS), Disability Benefits Questionnaire, VA Form 21–0960M–6.
m. Hand and Finger Conditions Disability Benefits Questionnaire, VA Form 21–0960M–7.
n. Hip and Thigh Conditions Disability Benefits Questionnaire, VA Form 21–0960M–8.
o. Knee and Lower Leg Conditions Disability Benefits Questionnaire, VA Form 21–0960M–9.
p. Muscle Injuries Disability Benefits Questionnaire, VA Form 21–0960M–10.
q. Shoulder and Arm Conditions Disability Benefits Questionnaire, VA Form 21–0960M–12.
r. Temporomandibular Joint (TMJ) Conditions Disability Benefits Questionnaire, VA Form 21–0960M–15.
s. Wrist Conditions Disability Benefits Questionnaire, VA Form 21–0960M–16.
t. Eye Conditions Disability Benefits Questionnaire, VA Form 21–0960N–2.

OMB Control Number: 2900—New (DBQs—Group 2).

Type of Review: New collection.

Abstract: Data collected on VA Form 21–0960 series will be used to obtain information from claimants treating physician that is necessary to adjudicate a claim for disability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden

a. VA Form 21–0960A–2—10,000.
b. VA Form 21–0960A–3—12,500.
c. VA Form 21–0960A–4—10,000.
d. VA Form 21–0960C–4—37,500.
e. VA Form 21–0960E–1—18,750.
f. VA Form 21–0960F–1—6,250.
g. VA Form 21–0960F–2—6,250.
h. VA Form 21–0960M–1—12,500.
i. VA Form 21–0960M–2—15,000.
j. VA Form 21–0960M–4—10,000.
k. VA Form 21–0960M–5—12,500.
l. VA Form 21–0960M–6—7,500.
m. VA Form 21–0960M–7—15,000.
n. VA Form 21–0960M–8—25,000.
o. VA Form 21–0960M–9—25,000.
p. VA Form 21–0960M–10—15,000.
q. VA Form 21–0960M–12—25,000.
r. VA Form 21–0960M–15—3,750.
s. VA Form 21–0960M–16—20,000.
t. VA Form 21–0960N–2—30,000.

Estimated Average Burden per Respondent

a. VA Form 21–0960A–2—30 minutes.
b. VA Form 21–0960A–3—15 minutes.
c. VA Form 21–0960A–4—30 minutes.
d. VA Form 21–0960C–4—30 minutes.
e. VA Form 21–0960E–1—15 minutes.
f. VA Form 21–0960F–1—15 minutes.
g. VA Form 21–0960F–2—15 minutes.
h. VA Form 21–0960M–1—30 minutes.
i. VA Form 21–0960M–2—30 minutes.
j. VA Form 21–0960M–4—30 minutes.
k. VA Form 21–0960M–5—15 minutes.
l. VA Form 21–0960M–6—15 minutes.
m. VA Form 21–0960M–7—30 minutes.
n. VA Form 21–0960M–8—30 minutes.
o. VA Form 21–0960M–9—30 minutes.
p. VA Form 21–0960M–10—30 minutes.
q. VA Form 21–0960M–12—30 minutes.
r. VA Form 21–0960M–15—15 minutes.
s. VA Form 21–0960M–16—30 minutes.
t. VA Form 21–0960N–2—45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Form 21–0960A–2—20,000.
b. VA Form 21–0960A–3—50,000.
c. VA Form 21–0960A–4—20,000.
d. VA Form 21–0960C–4—75,000.
e. VA Form 21–0960E–1—75,000.
f. VA Form 21–0960F–1—25,000.
g. VA Form 21–0960F–2—25,000.
h. VA Form 21–0960M–1—25,000.
i. VA Form 21–0960M–2—30,000.
j. VA Form 21–0960M–4—20,000.
k. VA Form 21–0960M–5—50,000.
l. VA Form 21–0960M–6—30,000.
m. VA Form 21–0960M–7—30,000.
n. VA Form 21–0960M–8—50,000.
o. VA Form 21–0960M–9—50,000.
p. VA Form 21–0960M–10—30,000.
q. VA Form 21–0960M–12—50,000.
r. VA Form 21–0960M–15—15,000.
s. VA Form 21–0960M–16—40,000.
t. VA Form 21–0960N–2—40,000.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–6759 Filed 3–22–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 56 March 23, 2011

Part II

Federal Communications Commission

47 CFR Part 54

Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 11–42 and 03–109, CC Docket No. 96–45; FCC 11–32]

Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link-Up

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) puts forward a set of proposals to reform and modernize Lifeline/Link Up, including recommendations of the Federal-State Joint Board on Universal Service, Government Accountability Office, and the National Broadband Plan. The reforms proposed will significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot projects that would assist the Commission in assessing strategies to increase broadband adoption, while not increasing overall program size.

DATES: Comments are due on or before April 21, 2011, reply comments on Sections IV, V (Subsection A), VII (Subsections B & D) are due on or before May 10, 2011, and reply comments on the remaining sections are due on or before May 25, 2011.

ADDRESSES: You may submit comments, identified by CC Docket No. 96–45 and WC Docket Nos. 03–109 and 11–42, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *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.
- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

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: Kimberly Scardino, Wireline Competition Bureau, (202) 418–1442 or TTY: (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 03–109 and 11–42, CC Docket No. 96–45, FCC 11–32, adopted March 3, 2011, and released March 4, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1. 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/*or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
  - *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - 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, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160. Furthermore, three copies of each pleading must be sent to Kimberly Scardino, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, Room 5–B448, Washington, DC 20554; e-mail *Kimberly.Scardino@fcc.gov,* and Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; e-mail: *Charles.Tyler@fcc.gov.*

Filings and comments are also 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. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (tty), or by facsimile at (202) 488–5563.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov;* phone: (202) 418–0530 or TTY: (202) 418–0432.

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

For further information regarding this proceeding, contact Kimberly Scardino, Wireline Competition Bureau at (202) 418–1442, *Kimberly.Scardino@fcc.gov.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 23, 2011.

Comments on the proposed information collection requirements should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0819.

Tile: Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

Form Number: 497.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit.

Number of Respondents and Responses: 8,601,400 respondents; 8,601,400 responses.

Estimated Time per Response: 2.5 Hours.

Obligation to Respond: Required to retain benefits.

Frequency of Response: On occasion, Monthly, Annually, Other 1-Time.

Total Annual Burden: 878,874 hours.

Annual Cost Burden: $829,487.5.

Privacy Impact Assessment: Yes. The Commission is preparing the Privacy Impact Assessment.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Eligible Telecommunications carriers are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. The telecommunciations carriers must file FCC Form 497 to solicit reimbursement. Collection of this data is necessary for the administor to accurately provide settlements for the low-income programs according to Commission rules. The Commission has issued a Notice of Proposed Rulemaking (FCC 11–32) that proposes new and/or modified Commission rules to improve the effectiveness of the low-income support mechanism. As part of the Lifeline and Link Up Reform and Modernization NPRM, the Commission proposes a series of revisions to the information collected by ETCs and their Lifeline and Link Up subscribers, and provided to USAC to strengthen protections against waste, fraud, and abuse. The NPRM also proposes a Lifeline Broadband Pilot Program.

I. Introduction

1. Lifeline and Link Up are a critical part of the Commission's universal service mission, ensuring that we implement Congress's directive to ensure the availability of basic communications services to all Americans, including low-income consumers. For more than two decades, Lifeline and Link Up (together, "Lifeline/Link Up" or "the program") have helped tens of millions of Americans afford basic phone service, providing a "lifeline" for essential daily communications as well as emergencies. But recent technological, market, and regulatory changes have put increasing strain on the program. Today, we begin to comprehensively reform and modernize the Lifeline and Link Up program. Building on proposals from the National Broadband Plan, as well as recent recommendations from the Federal-State Joint Board on Universal Service ("Joint Board") and the Government Accountability Office (GAO), the reforms proposed here will significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot projects that would assist the Commission in assessing strategies to increase broadband adoption, while not increasing overall program size.

2. Our effort is consistent with the Commission's ongoing commitment to re-examine and modernize all components of USF to increase accountability and efficiency, while supporting broadband deployment and adoption. The Commission has already made important strides in this area: We have modernized our E-rate program so schools and libraries can get faster Internet connections and access 21st century learning tools. We have proposed changes to our rural health

care program so patients at rural clinics can benefit from broadband-enabled care such as remote consultations with specialists anywhere in the country. And we have proposed a Mobility Fund and a Connect America Fund to spur the build out of broadband networks, both mobile and fixed, in areas of the country that are uneconomic to serve.

3. The Commission has not systematically re-examined Lifeline/Link Up since the passage of the 1996 Act. During this period, consumers have increasingly turned to wireless service, and Lifeline/Link Up now provides many participants discounts on wireless phone service. In the last several years, Lifeline/Link Up has grown significantly, from an inflation-adjusted $667 million in 2000 to $1.3 billion in 2010, with new participation by firms, such as pre-paid wireless providers, that focus on serving low-income consumers. The time has come to review the program holistically, address the risks and challenges it now presents, and ensure that it is on a firm footing to efficiently and effectively achieve its statutory purpose.

4. Accordingly, last year the Commission asked the Joint Board to recommend reforms focused on eliminating waste, fraud, and abuse; controlling costs; and improving program performance and accountability. In response, the Joint Board recommended that the Commission: (1) Encourage automatic enrollment as a best practice for all States; (2) adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all States; (3) allow States to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures; (4) require all ETCs in all States to submit the data results of their verification sampling to the Commission, the States, and the Universal Service Administrative Company and make the results publicly available; and (5) adopt mandatory outreach requirements for all ETCs that receive low-income support and maintain advisory guidelines for States with respect to performing low-income outreach. We seek comment on the Joint Board's recommendations here. The Wireline Competition Bureau has also taken a number of steps to combat waste, fraud, and abuse, including requiring one provider to contact annually all of its Lifeline subscribers to ensure those customers are only receiving one benefit per household and requiring another provider to remove customers from its Lifeline roster if they do not use their phones for sixty days. And late last year, the GAO issued a report with recommendations for program reforms, which also inform our proposals here.

5. This Notice of Proposed Rulemaking (NPRM) puts forward a set of proposals to reform and modernize Lifeline/Link Up, including recommendations of the Joint Board, GAO, and the National Broadband Plan.

6. We begin by proposing specific performance goals for the program, and metrics to measure its performance in advancing the universal service objectives established by Congress. We then propose immediate steps to address waste, fraud, and abuse and to bolster mechanisms to detect and deter rule violations. In particular, we propose to strengthen our rules and improve the incentives of program participants to ensure that the program does not provide multiple, duplicative discounts to the same residential address. We also propose to eliminate reimbursement for certain services, including initiation fees that may be inflated or selectively applied only to low-income households. To reduce waste by ensuring that the program supports only communications services that consumers actually use, we propose to eliminate funding for services that go unused for more than sixty days. We seek comment on expanding oversight, including through more extensive audits. We also seek comment on a proposal to impose an annual funding cap on Lifeline/Link Up, either temporarily—until implementation of the reforms proposed in this NPRM—or permanently.

7. This NPRM also addresses the unique situations facing residents on Tribal lands, who historically have had phone penetration substantially below the national average. We propose to clarify eligibility requirements for low-income Tribal households, and to permit Tribal enrollment based on participation in the Food Distribution Program on Indian Reservations.

8. This NPRM also seeks comment on a number of proposals to streamline and improve overall program administration. We ask whether the current system—in which responsibility for enrolling customers and ensuring their continued eligibility is split among carriers, State agencies, and third-party administrators—provides the right framework for prudent management of public resources and effective program administration. We propose to require all States to utilize the same baseline eligibility requirements that exist in our Federal rules, which could streamline enrollment and facilitate verification of ongoing eligibility, and seek comment on allowing States to use eligibility standards that supplement the minimum Federal uniform standards. Consistent with the recommendation of the Joint Board, we propose uniform national standards for the minimum verification of ongoing customer eligibility to stay enrolled in Lifeline and seek comment on whether States should be permitted to impose additional verification requirements beyond that Federal standard. We also seek comment on a proposal to use an automated information management system to prevent duplicate claims for support, provide real-time electronic verification of consumer eligibility, and provide a means of ongoing verification of eligibility.

9. We also ask how the program should be modernized in light of significant marketplace changes in the last fifteen years. We seek to develop a record on what basic services the program should support, and we seek comment on whether the current framework for determining reimbursement levels remains appropriate in an environment when many service offerings are not rate regulated.

10. We also propose reforms to put Lifeline/Link Up on a more solid footing to achieve Congress's goal of addressing the 21st century challenge of helping low-income households adopt broadband. Although access to affordable voice service remains vital to consumers, supporting basic voice service alone may no longer be adequate to meet the basic communications needs of low-income Americans. Broadband is becoming an essential communications platform. Broadband can help working parents stay involved in their child's education, enroll in and complete a distance-learning class to improve professional skills, and complete everyday tasks like paying bills and shopping for necessities. Broadband can help children in inner-city neighborhoods and remote rural towns access high-quality online educational content that might not otherwise be available to them. Broadband can help the unemployed search for jobs and apply for job postings, many of which are simply not available offline.

11. But many low-income Americans cannot afford a home broadband connection. Our 2010 Broadband Consumer Survey found that while 93 percent of households with incomes greater than $75,000 have broadband at home, only 40 percent of adults with household incomes less than $20,000 have broadband at home. And consumers cited cost as a primary

obstacle to adoption. This gap in broadband adoption is significantly greater than the gap in telephone penetration rates. While Lifeline and Link Up have significantly narrowed the telephone subscribership gap between low-income households and the national average, a new divide has emerged for broadband.

12. Consistent with our statutory obligation to ensure access to quality, affordable communications, we seek comment on proposals to ensure Lifeline and Link Up meet the modern communications needs of low-income consumers. In particular, we propose that eligible households be permitted to use Lifeline discounts on bundled voice and broadband service offerings. We also seek comment on how best to design a broadband pilot program that will help inform the Commission's inquiry into meeting the 21st century communications needs of low-income consumers.

II. Establishing Program Goals and Measuring Performance

13. As we move forward to reform and modernize the Commission's low-income support mechanisms, we seek comment on the program's performance goals, consistent with our statutory obligations, and on how best to measure the program's performance in achieving those goals.

14. In establishing performance goals, we are guided in the first instance by the Act. Section 254(b) outlines the principles upon which the Commission and the Joint Board are to base policies for the "preservation and advancement of universal service." These principles include the notion that quality services should be available at "just, reasonable and affordable" rates, and that consumers in all regions of the nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to services in urban areas at reasonably comparable rates. The statute specifies that there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service. Section 254(c)(1) of the Act also sets forth certain criteria that we should consider when deciding what services are eligible for universal service support, including the extent to which those services are "essential to education, public health, or public safety;" and "consistent with the public interest, convenience, and necessity."

15. Historically, the primary goal for the Lifeline/Link Up program has been to facilitate the availability of affordable phone service to low-income households. Over time, telephone penetration rates for low-income consumers have increased, although they still remain below the national average and a six percent gap has remained relatively stable in recent years.

16. In 2007, the Commission took initial steps to improve the management of the low-income program by adopting measures of efficiency and effectiveness. At that time, however, the Commission concluded that it did not have sufficient data to determine appropriate performance goals. In 2010, GAO noted that while the Commission had developed performance measures, it had not quantified its goal of increased telephone subscribership among low-income households. GAO also noted the importance of developing baseline and trend data for past performance, and of identifying target performance levels for multi-year goals.

17. Clear performance goals and measures should enable the Commission to determine not just whether Federal funding is used for intended purposes, but whether that funding is accomplishing the program's ultimate objectives. We now propose to establish explicit performance goals in order to provide a basis for determining whether Lifeline/Link Up is successfully promoting and advancing the availability of quality services at just, reasonable, and affordable rates for low income consumers.

18. Consistent with the Act and GAO's recommendations, we seek comment on three specific goals and related performance measures for the Lifeline/Link Up program.

19. We propose that our first performance goal be to preserve and advance the availability of voice service for low-income Americans. We note the vital role that voice telephony continues to play for consumers, particularly for public safety and public health. We propose to define "availability" of voice service for purposes of Lifeline/Link Up to mean that low-income households have access to that service. We propose to adopt a goal of eliminating any difference in the availability of voice service for low-income consumers compared to non-low-income consumers.

20. We seek comment on how to measure availability of voice services for low-income households. The Commission has historically measured telephone penetration, which measures voice service subscriptions, as a proxy for availability. We propose to establish as an outcome measure the difference between voice service subscribership rates for low-income households eligible for the Lifeline and Link Up program and voice service subscribership rates for the households in the next higher income level as defined in the CPS. Based on the most recent information this would suggest a target subscribership rate for low-income households of 96.9 percent, which is the subscribership rate for households with incomes in the $35,000–$39,999 range. We seek comment on whether we should use another measure of availability. We seek comment on how we should define "low-income household" for the purpose of this performance goal in light of the differing eligibility standards that exist today from State to State. For instance, for simplicity, should we use 135% of the Federal Poverty Guidelines for a family of four as the threshold for monitoring program performance? We seek comment on whether we should instead compare subscribership rates for eligible low-income households with some other measure, such as the mean or median subscribership rate for all non-low income households.

21. We propose as our second performance goal to ensure that low-income consumers can access supported services at just, reasonable, and affordable rates. We have concluded in the past that the concept of affordability has both an absolute and a relative component. The absolute component takes into account whether an individual has enough money to pay for a service, and the relative component takes into account whether the cost of a service would require a consumer to spend a disproportionate amount of his or her income on that service. Comparing subscribership or adoption rates among low-income households to nationwide subscribership and adoption rates may be useful in evaluating whether supported services are available to low-income households and affordable in absolute terms, but those comparisons may not be dispositive in evaluating whether low-income households can afford those services in relative terms. We seek comment on whether an appropriate performance measure for this goal would be to compare the percentage of low-income household income spent on a voice service to the percentage of household income spent on voice service for the next highest income range as identified by the Bureau of Labor Statistics.

22. As our third performance goal, we propose to ensure that our universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals. Administering USF requires balancing

competing demands, recognizing that increased demand for funds imposes a greater contribution burden on consumers and businesses. As we have noted previously, the principles outlined in section 254 require us to ensure that quality services are affordable for all consumers but we must also be "mindful of the effects that expanded universal service mechanisms may have on consumers." This goal includes ensuring that the Lifeline/Link Up program is accountable and fiscally responsible, with support disbursed efficiently and effectively only to those who need it.

23. In the *Connect America Fund Notice,* 76 FR 11632, March 2, 2011, we sought comment on measuring the relative contribution burden on consumers over time, defined as total inflation-adjusted expenditures of the Fund each year, divided by the number of American households. We seek comment here on whether a similar measure would be appropriate for Lifeline/Link Up, specifically tracking whether the inflation-adjusted Lifeline/Link Up expenditure per American household is increasing or decreasing over time. In 2010, the contribution burden for Lifeline/Link Up was equivalent to approximately $0.95 per U.S. household per month.

24. We also recognize that a key component of achieving our goal of providing support that is sufficient but not excessive is to protect the universal service fund against waste, fraud, and abuse. That benefits consumers and keeps rates more affordable for all consumers by reducing the need to collect funds for the program that are not appropriately utilized. We propose a number of rule changes in this NPRM that would reduce waste, fraud, and abuse in the program. We seek comment on whether we should establish as a performance measure keeping erroneous payments in the program below a specified level, for instance by reducing levels of ineligible recipients to a specified percentage.

25. We also seek comment on appropriate efficiency metrics. For example, is there a way to measure increases in the percentage of low-income household subscribership relative to the amount of funding spent per household receiving Lifeline/Link Up? We seek comment on this and other measures of efficiency.

26. Although we are committed to taking all necessary steps to eliminate reduce waste, fraud, and abuse, we also recognize the potential negative impact of increased government regulatory burden, especially on small companies, of some of the measures that can assist in detecting and deterring waste, fraud and abuse. We seek comment on how best to balance these competing interests.

27. We seek comment on whether these three goals and associated performance measures are appropriate for the Lifeline/Link Up program and ask that commenters consider the reform proposals below in light of the proposed goals and performance measures outlined here. Are there additional or alternative goals and performance measures that we should consider? To the extent that these three goals and performance measures, or any others that the Commission may adopt, may be in tension with each other, commenters should suggest how we should prioritize among competing goals.

28. Last month we sought comment on whether broadband should be a supported service. If broadband becomes a supported service, should we adopt a performance goal of advancing the availability of broadband to low-income households? Analogous to our proposal in the voice context, we seek comment on whether the Commission should establish as an outcome measure the difference between the broadband penetration rates for low-income households and non-low-income households in the next higher income level as defined in the CPS, if broadband becomes a supported service. Should we consider broadband usage in addition to broadband adoption? Unlike voice service, there is a much larger gap in penetration rates for broadband between low-income households and the general population. Should we establish a specific numerical target for narrowing that gap over a particular time period?

29. If Lifeline is modernized to support broadband, how should we measure affordability for broadband? Should we measure affordability separately for voice, broadband, and bundled offerings? We seek comment on what data we would need to monitor the program's progress if we were to adopt such a performance measure, and the least burdensome means of obtaining such data.

30. We invite commenters to propose additional or alternative goals and measures for the program. We also seek comment on how our performance measures should take into account the actions of other governmental agencies, such as State regulators, that may impact the Commission's ability to meet its universal service goals. We note that developing the record on these issues is consistent with GAO's suggestions.

III. Immediate Reforms To Eliminate Waste, Fraud, and Abuse

31. We are committed to eliminating waste, fraud, and abuse in Lifeline/Link Up, and to identifying and penalizing program violations when they occur. We recognize that the recent expansion in program demand, as well as marketplace developments, present increased concerns about potential waste and misconduct. We propose to strengthen our rules to more rigorously ensure that the program subsidizes no more than one subscription per eligible residential address, and to improve audits of the program. We also propose rule changes to ensure that carriers are reimbursed only for the provision of Lifeline services to current customers. Finally, we propose to modify our rules to the extent that they offer unnecessary reimbursement to carriers for expenses that may be inflated or unjustified. The continued success of Lifeline/Link Up depends on targeting support to those who qualify, and ensuring that support does not extend beyond the confines of our rules.

A. Duplicate Claims

32. We propose rules that will reduce the likelihood that residents of a single address will receive more than one subsidized service through the program. We understand that there may be reasons to create limited exceptions to the one-per-residential-address rule that we propose in Section V. In this proceeding, we plan to develop a full record to craft appropriately narrow exceptions to application of this proposed rule. We intend to consult with ETCs, Tribal communities, the States, and other interested parties to devise a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud, and abuse.

33. In addition, it may be necessary for the Commission to take action on an interim basis while this proceeding is pending to address immediately the harm done to the Fund by USAC reimbursing ETCs for duplicate claims. The purpose of the Lifeline program is to provide telecommunications access to low-income subscribers. Recent audit results indicate there is a risk that a significant number of Lifeline consumers may be unnecessarily and improperly receiving support for more than one service per residential address. To address the problem of wasteful, duplicate Lifeline support, it may soon be necessary to adopt interim rules in this area while the record develops on

the issues on which we are seeking comment.

34. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service for low-income subscribers, we propose several approaches to address duplicative support. We propose to adopt a new section 54.408 and to adopt several amendments to sections 54.400, 54.405, and 54.410 that would facilitate the enforcement of a one-per-residential address limitation. We also propose to amend section 54.410 to require ETCs to submit to USAC unique household-identifying information for every supported household to help determine whether two or more ETCs are providing Lifeline-supported service to the same residential address. We also propose remedies to address situations in which a consumer has received duplicate support and to deter such abuses. These proposals are a first step in deterring waste, fraud, and abuse, and we recognize there may be other appropriate actions that would take longer to implement, such as the creation of a database.

35. With these proposed rules, we seek to create incentives for carriers to avoid requesting support for duplicative services, and to impose penalties for those who continue to do so. We also seek to ensure that our rules protect subscribers' privacy and service providers' proprietary business information.

36. *Measures To Assist in Detecting Duplicate Claims.* A unique household identifier may be helpful to ensure that a residential address does not receive more than one subscription that is subsidized by the program. Specifically, we seek comment on amending section 54.410 by requiring ETCs to provide such information as customer names, addresses, social security numbers (either the full number or the last four digits), birthdates, or other unique household-identifying information to USAC on their Forms 497. Would the benefits of requiring subscribers to provide such information outweigh the burdens, including possibly deterring some households from applying for benefits?

37. We seek comment on the best way to accomplish this efficiently and effectively consistent with privacy statutes, such as the Electronic Communications Privacy Act (ECPA) and section 222 of the Communications Act. For example, what information could an ETC be required to provide to USAC on its Form 497 that would ensure that a household is not receiving multiple subsidized subscriptions at the residence? What measures could USAC put in place to ensure compliance with ECPA or other applicable laws, such as requiring ETCs first to obtain subscriber consent to share information? To the extent that use of customer proprietary network information (CPNI) is needed to ensure that a subscriber at a single residential address is not receiving multiple subsidized subscriptions, how do commenters suggest we ensure compliance with section 222 of the Communications Act and our implementing rules? Are there other laws we need to consider and address? We also seek comment on how best to address any other concerns about privacy, security, or proprietary data issues resulting from collection of this data. To streamline enforcement, we propose to require all ETCs to provide USAC with data in a consistent electronic format to facilitate USAC's detection of duplicate claims. We seek comment on the burdens this would impose on carriers participating in the program.

38. *Remedies To Address Duplicate Claims.* On January 21, 2011, the Wireline Competition Bureau provided guidance to USAC on how to resolve duplicate subsidies when more than one ETC seeks support from USAC for the same subscriber. We propose to amend section 54.405 to codify this guidance. We propose that when a duplicate subsidy is discovered, USAC is to notify the ETCs to discontinue including the duplicate subscriber in their list of subscribers for which the ETCs are claiming Lifeline support on the FCC Form 497. ETCs must notify the subscriber by phone, and in writing where possible, and explain that the subscriber has 30 days to select one Lifeline provider or face de-enrollment from the program. Once the subscriber selects a single Lifeline provider for the household by signing a new certification, the chosen ETC must so notify USAC and the other ETC. The selected ETC may then seek reimbursement for the subscriber going forward, while the other ETC must de-enroll the household from its Lifeline service and may not seek reimbursement for that subscriber going forward. We seek comment on this proposal.

39. Several ETCs and trade associations have suggested an alternative duplicate resolution process to the Commission. Under their proposal, USAC would send written notification, approved by the Commission, to all subscribers it identifies as receiving duplicate Lifeline subsidies. Such notice would require them to select one Lifeline provider from a list of providers on a form, which the subscriber would send back to USAC within 30 days. USAC would, in turn, notify the affected ETCs about the written notification to the subscriber, and the ETCs would continue to provide Lifeline-supported service to the subscriber and seek reimbursement from the Fund until the USAC resolution process is complete. When USAC receives a completed form from the customer with its selection, it would notify only the ETC not selected by the subscriber, and that ETC would be required to de-enroll the subscriber from its Lifeline service. Under this proposal, if USAC does not receive a completed form from the customer, USAC would be instructed to either notify both ETCs to de-enroll the subscriber, or contact the subscriber by phone to determine the subscriber's provider selection. We seek comment on this proposal. Specifically, we seek comment on the advantages and disadvantages of USAC notifying the subscribers receiving duplicate support, as opposed to requiring ETCs to do so. Would subscribers be more or less likely to respond to an inquiry from USAC (an entity they likely are unfamiliar with) as opposed to their service provider? Would the form that USAC sends to the subscriber include every ETC serving the area or just the two ETCs involved with the request for duplicative support? To what extent would implementation of such a proposal increase administrative costs for USAC, and thereby impact the size of the Fund?

40. In the alternative, we could adopt a rule that when duplicate payments are identified, ETCs must notify the customer that they have 30 days to select a single ETC to provide Lifeline service going forward. If the customer makes a timely selection, the carrier not selected will no longer receive Lifeline support for that customer. If the customer fails to make a timely selection, the carrier that has provided continuous Lifeline service to the customer for the longest period of time would continue to receive Lifeline support and the other carrier would no longer receive support for that customer. We seek comment on this proposal.

41. We also seek comment on whether consumers receiving duplicative support should be de-enrolled in Lifeline after violating the one-per-residential-address requirement one or more times. After more than one duplicate subsidy is discovered, should the consumer listed as the subscriber, or the entire household, be de-enrolled from Lifeline? If de-enrollment is temporary, for how long should the exclusion from the program last? If

permanently, on what basis? Should we deny eligibility only if there is evidence of intent to violate the "single support per residential address" provision, or if this is not the subscriber or household's first such violation? Should we impose stricter penalties on a consumer or household with multiple violations? Should we impose stricter penalties on a household receiving more than two Lifeline/Link Up subsidies? Should we first provide an opportunity for the subscriber to demonstrate that the household's dual enrollment was due to an inadvertent mistake or misunderstanding of applicable requirements? What information would need to be collected and maintained by USAC in order to ensure that certain subscribers are prohibited from participating in the program in the future? If we do not permanently or temporarily bar such subscribers, what would be an appropriate remedy? Finally, we seek comment the potential impact on the telephone penetration rate among low-income households if this proposal were adopted.

42. We also propose a mechanism for reimbursing the Universal Service Fund in the event of duplicate claims. Our rules currently direct USAC to suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of those discounts, offsets, or support amounts upon reasonable request, or "if directed by the Commission to do so." We propose that USAC be required to seek recovery for funds from all ETCs with duplicates for the applicable period—*i.e.,* if one or more individual residing at the same address have been obtaining Lifeline support from two or more providers simultaneously, USAC would be required to seek recovery from all implicated providers for all support received during the period of duplicative service, which we propose to define as the period beginning at the time a duplicate is identified until the time at which it can be demonstrated that the consumer or household is no longer receiving duplicate benefits. This approach would create appropriately strong incentives for providers to take measures to ensure that they are not seeking excessive support. We note that in this situation support would have been provided in contravention of our "single support per residential address" rule, and thus, arguably, neither ETC should have received support during the period of duplicative support. Further, if the customer does not reply to the notice and is terminated from Lifeline by both ETCs, we propose that USAC recover all Lifeline support sought for that subscriber from both ETCs for the period of time between when the duplicate was first identified to the point at which the customer is terminated from the Lifeline program. We seek comment on this proposal. We also seek comment on, alternatively, requiring that USAC seek recovery only from the ETC that is not chosen by the consumer for the period of time over which duplicate Lifeline support was provided. We seek comment on this proposal. Further, we seek comment on whether we should enable ETCs to avoid reimbursement obligations if they demonstrate responsible efforts to avoid duplicative funding. What would those efforts be and how could they be shown? Should we establish certain minimum safeguards that could act as a safe harbor for ETCs? Should we restrict recovery only upon a showing of negligence by the ETC? Should the ETCs be permitted to seek reimbursement for any recovered funds from the subscriber? For all of the above proposals, and any other approaches suggested by commenters, we seek comment on how we should determine the period of duplicative coverage.

43. *Addresses.* Several stakeholders have noted that customers have not been permitted to obtain Lifeline or Link Up service when using a P.O. Box as their mailing address. Rather, ETCs have required applicants seeking support to provide a unique residential address. This practice has been used to ensure that the subscriber is eligible for supported service and is not receiving more than one subsidized service. We note that the other information we propose to collect—such as name, birth date, and social security number—are unique to individuals but do not fully address concerns that different members of the same household are receiving subsidized service. In contrast, address information might be particularly suitable to prevent that situation. We seek comment on whether to codify as a rule the current practice of requiring unique residential addresses, in order to assist both ETCs and USAC in determining whether an applicant is already receiving Lifeline- or Link Up-supported services. Under such a rule, ETCs would be required to collect the residential addresses of their Lifeline and Link Up applicants before they provided discounted service. Even if a customer receives mail at a P.O. Box, the customer would have to provide a residential address to which its service would be tied.

44. We seek comment on this proposal. Are there circumstances where a residential address could not be provided? Are there privacy concerns that we should take into account when requiring customers to provide a residential address? How should we treat transient applicants who do not have a fixed address, or consumers who use rural route addresses, for whom there may be no other U.S. Postal Service address? Is there substitute information that we should require in the event that no residential address is available?

B. Pro Rata Reporting Requirements

45. We propose to codify the rule that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month. Such a rule would ensure that all ETCs comply with the requirement that support may only be claimed for active subscribers, and thereby minimize waste of Lifeline funds. Carriers routinely bill customers for partial months, and should have the capacity in their billing systems to determine whether a customer is a Lifeline subscriber for the full billing period. We seek comment on our proposal.

C. Eliminating Reimbursement for Toll Limitation Service

46. We propose amending our rules to eliminate Lifeline support for the costs of providing TLS to Lifeline customers. This rule, adopted more than a decade ago, may have outlived its usefulness, given reductions in long-distance calling rates. We also note that there is great variance in TLS costs claimed by ETCs seeking reimbursement, ranging from $0 to $36 per Lifeline customer per month. Such variance may be due in part to the ambiguity of our rule governing TLS support, which States that support for TLS will be equal to the ETC's incremental costs, but does not define incremental TLS costs eligible for Lifeline reimbursement. It is unclear, however, whether providing TLS imposes *any* incremental costs on carriers, since a number of ETCs do not seek any reimbursement for TLS costs, despite providing TLS to their subscribers. Moreover, the wide variance in support sought by ETCs suggests that some may be inflating their true costs. Elimination of Lifeline support for TLS could save the program roughly $23 million in 2011, which, in turn, could be used to conduct pilot programs to provide broadband support or otherwise utilized to provide eligible households with Lifeline discounts. We seek comment on this proposal. In the alternative, should we adopt a flat amount of reimbursement for TLS, and

if so, what would be an appropriate amount?

D. Customary Charges Eligible for Link Up

47. *Defining Customary Charge.* We seek to eliminate any incentive or opportunity for carriers to impose charges on program participants in order to increase universal service support, as that would represent a waste of funds. We therefore propose to amend our rules to define "customary charge for commencing telecommunications service" as the ordinary initiation charge that an ETC routinely imposes on all customers within a State. We seek comment on our proposed amendment.

48. We also propose that Link Up rules make clear that activation charges that are waived, reduced, or eliminated when activation is accompanied by purchase of additional products, services, or minutes are not customary charges eligible for universal service support. TracFone's petition indicates that it supports this proposal, but other ETCs disagree, arguing that there are legitimate reasons for an ETC to waive customary activation charges for low-income consumers, including compliance with some State requirements. For instance, some commenters suggest we create an exception to the proposed rule in instances where a State commission has ordered ETCs to waive the remainder of the connection charge not reimbursed by USF. We seek comment on whether, if we amend our rules as described, we should recognize exceptions for certain categories or types of fee waivers or reductions.

49. We also seek to develop a record regarding the prevalence of situations in which ETCs seek reimbursement for connecting the same customer more than one time, at the same location. For example, if a customer's service was disconnected for non-payment, do ETCs ever impose another connection charge to resume service to that address? Do they do so frequently, or as a matter of course? How would we evaluate whether such charges are reasonable? We seek comment on whether our rules should be clarified to prohibit ETCs from seeking more than one Link Up subsidy for the same customer at the same location.

50. We seek comment on whether our Link Up rules should be further amended to address concerns with waste, fraud and abuse in this area. For example, one commenter suggests that we require each ETC to certify that its activation charge is equally applicable to all customers. We seek comment on whether such a certification process would effectively prevent waste, and how burdensome such a certification requirement would be. In addition, we seek comment on whether we should adopt a rule that prohibits resellers from imposing a connection charge on consumers when the underlying wholesale provider has not assessed a similar connection charge on the reseller.

51. *Link Up Support Amount.* Historically, incumbent telephone companies incurred costs in initiating service, such as the cost of visiting the housing unit to physically connect a telephone line to initiate service. In contrast, today, service initiation in virtually all instances for both wireless and wireline providers is done remotely via software, with the actual costs of installation likely to be significantly lower than several decades ago.

52. Our rules specifying Link Up amounts have not been updated to reflect the changes in the industry that have occurred relating to service initiation. We seek comment on what the typical service initiation fee is for non-Lifeline subscribers and ask whether we should reduce the current $30 cap on Link Up support to some lower figure.

53. Our current rules specify that ETCs may receive Link Up support for the revenue they forgo in reducing their customary charge for commencing telecommunications service. In order to receive Link Up support, ETCs are required to keep accurate records of the revenues they forgo in reducing their customary charge for commencing service. The forgone revenues for which the ETCs may receive reimbursement shall include only the difference between the carrier's customary connection and the charges actually assessed to the participating low-income consumer. Moreover, the reduction shall be half of the customary charge or $30, whichever is less. As discussed above, there is concern that some ETCs may be inflating connection charges in an effort to collect money from the Fund. In order to make Link Up reimbursement more transparent and limit potential waste of funds, we seek comment on whether we should require all ETCs seeking Link Up reimbursement to submit cost support to USAC for the revenues they forgo in reducing their customary charges. Since ETCs are required to keep accurate records of the revenues they forgo for Link Up, it may not be too burdensome to require the ETCs to submit such data to USAC. We seek comment on this proposal and whether there are alternative ways to ensure that Link Up reimbursement is based on actual revenues forgone as a result of connecting low-income consumers. We also seek comment on what underlying costs may be recovered through Link Up. For instance, should Link Up be provided for costs associated with marketing and customer acquisition, or limited to costs associated with activating a phone line or establishing a billing relationship?

E. Customer Usage of Lifeline-Supported Service

54. We want to ensure that Lifeline support is used for the benefit of low-income subscribers that are actually using the supported service, and we propose to amend our rules to prevent ETCs from obtaining Lifeline support for inactive consumers. Specifically, we propose to prohibit ETCs from seeking reimbursement from the Universal Service Fund for any Lifeline customer who has failed to use his or her service for 60 consecutive days. We seek comment on whether a customer's failure to use service for a specific period of time may reasonably demonstrate, or serve as a proxy for, service discontinuation. If so, we seek comment on whether 60 days is a reasonable period, or whether the period of inactivity should be shorter (*e.g.,* 30 days) or longer (*e.g.,* 90 days).

55. The proposed rule is intended to (1) prevent subsidies going to ETCs for customers that are not using the service; and (2) eliminate incentives that carriers might have to ignore or fail to report that a customer has (or appears to have) discontinued service. We do not seek to penalize subscribers for non-usage, and our proposed rule would not affect the terms or conditions of service that might exist between the ETC and the customer. Nor do we propose to require ETCs to disconnect subscribers for non-usage. We recognize that some customers may use their telephones sparingly, for emergencies or occasional communication. To protect consumers, we propose to require ETCs to alert customers if the ETC imposes any obligation to use service during a specified period of time in order to maintain subsidized service. We seek comment on how ETCs can best inform their Lifeline customers of any requirement to use the phone during a specified period of time. We also seek comment on whether our proposed rules could affect access to 911 services, and if so, how we can ensure that consumers maintain access to emergency services. We note that the Commission's rules require commercial mobile radio service (CMRS) providers subject to the Commission's 911 rules to transmit all wireless 911 calls, including

those from non-service initialized phones, to Public Safety Answering Points (PSAPs). We do not seek to modify this rule and our proposed rule would still require ETCs to transmit a Lifeline customer's wireless 911 calls, even if the ETC is no longer providing service to that customer.

56. Although the concern that ETCs may continue to count subscribers that have stopped using service appears greatest with respect to pre-paid wireless service, those concerns are not limited to pre-paid wireless service. We seek comment on whether the rules we propose in this subsection should be limited to particular types of service, or should apply to all types of service.

57. *Minimum Consumer Charges.* In the *2010 Recommended Decision,* the Joint Board expressed concern about consumers receiving Lifeline service offerings that are offered at no cost to the subscriber. In particular, the Joint Board raised concerns about prepaid wireless ETCs, which do not provide a monthly bill and, in some cases, provide handsets and service at no charge to consumers. The Joint Board recommended that, to guard against waste, fraud, and abuse in the Lifeline program, the Commission consider whether a minimum monthly rate should be paid by all Lifeline subscribers, including eligible Tribal subscribers.

58. We seek comment on how best to prevent waste of universal service funds without creating unnecessary obstacles for low-income households to obtaining vital communications services. For instance, one option would be to adopt a rule requiring all ETCs in all States to collect some minimum monthly amount from participating households. If we were to adopt such a rule, what should that monthly amount be—*e.g.,* $1 or some other amount? Alternatively, should we consider requiring ETCs to assess a monthly fee on all Lifeline consumers equivalent to half of the customary monthly Lifeline charges or half of the maximum subsidy provided for under our rules, whichever is less? Would either of these requirements, if adopted, appropriately balance the need to guard against waste, fraud, and abuse in the Lifeline program by ensuring that low-income households have the incentive to make appropriate use of their Lifeline-supported services, with the need to avoid deterring eligible consumers from participating in the program?

59. Another option would be to require ETCs to collect some amount, such as $10 or $15, on a one-time basis from each Lifeline household prior to commencing Lifeline service. Such a rule could create appropriate incentives to ensure that Lifeline consumers genuinely want phone service and should deter situations in which Lifeline-supported service has been activated on a phone that is unused or improperly transferred to third parties.

60. Would either of these proposals create an unreasonable barrier to enrollment for households that need support but cannot afford to pay any fee? What would be the proper amount of financial contribution from low-income consumers that would appropriately balance our dual objectives of deterring waste, fraud, and abuse, while enabling those in need to obtain phone service? Should this amount vary based on the income of the qualifying low-income household?

61. We seek comment on the administrative burdens for ETCs of a requirement to collect a minimal amount, such as $1 per month, from participating consumers. We acknowledge that in other, non-Lifeline contexts, carriers may choose not to bill their customers monthly, and it may not be cost-effective to send a bill to collect such a small amount. Should we allow ETCs to collect a monthly fee on a bi-monthly basis? If we were to adopt a program-wide monthly fee requirement, should we explicitly prohibit carriers from waiving the fee? How can we adopt an approach that is technologically neutral and can be implemented easily by ETCs with diverse business models?

62. *Application of Minimum Charge to Tribal Consumers.* The Commission's rules currently require that the basic local residential rate for Tier 4 subscribers (*i.e.,* eligible low-income households residing on Tribal lands) may not fall below $1 per month. We have learned anecdotally that some carriers do not currently collect the $1 from their Tribal customers. While the Commission's current rules specify what the carrier must charge the Tribal subscriber, they do not explicitly require the ETC to collect such amounts, thereby allowing ETCs to waive the $1 per month fee.

63. If we adopt a proposal to require all ETCs to collect a minimum monthly fee from subscribers, we seek comment on whether to amend section 54.403(a)(4)(i) of the Commission's rules to specifically require a $1 monthly payment to be provided by each participating household to their ETC. Would this proposal, if adopted, adequately balance our objective of ensuring affordable service for eligible Tribal consumers while also guarding against waste, fraud, and abuse in the Lifeline program?

64. How would any of these proposals impact subscribership for low-income households on Tribal lands, which continue to lag significantly behind subscribership for the nation as a whole?

F. De-Enrollment Procedures

65. We propose rules requiring ETCs to de-enroll their Lifeline customers or households from the program under specified circumstances. Specifically, we propose to require ETCs to de-enroll their Lifeline subscribers when: (1) The subscriber is receiving duplicate support and fails to select one ETC in the allotted time after being notified of a duplicate claim; (2) the subscriber does not use his or her Lifeline-supported service for 60 days and fails to confirm continued desire to maintain the service; or (3) the customer does not respond to the eligibility verification survey. Under our proposed rules, the subscriber would receive notice that they could be de-enrolled from the program if they did not take action by a specified date. Should that timeframe be 60 days?

66. Some ETCs have argued that section 54.405(d) of our rules requires that they give customers 60-days' notice prior to terminating their Lifeline benefits. In addition, some State laws may require similar notice provisions. The notice provisions currently set forth in section 54.405(d) of our rules are tied to consumer eligibility for Lifeline, and are not applicable to situations involving subscriber non-responsiveness as a result of a duplicate claim or non-usage of the Lifeline service. For administrative simplicity, should the same timeframe be adopted for mandatory de-enrollment in the circumstances described above, or should we adopt a shorter period, such as de-enrollment within a 30-day period? We seek comment on our proposal to require ETCs to de-enroll Lifeline subscribers involved in the three scenarios described above. Would a shorter period be consistent with specific State notification requirements that may exist in non-default States? To the extent that commenters object to our proposal for mandatory de-enrollment, they should offer specific alternative solutions to protect the fund against waste, fraud, and abuse.

G. Audits

67. Waste, fraud, and abuse in the universal service program jeopardizes the availability of funds for supported services and imposes unjustifiable costs on carriers and ratepayers. We therefore seek to ensure there is a focused and effective system for identifying and

deterring program abuse. We seek comment on ways to improve the current low-income audit program in light of growing concerns about such issues as duplicate payments and consumer ineligibility. In particular, we seek comment on ways to improve the audit process to reduce improper payments and assess risks. In doing so, how can audits be targeted to better uncover the scope of errors associated with improper payments? What additional measures should be taken to mitigate the potential for program violations? Are there additional measures or incentives, beyond those that currently exist, that we should implement to encourage people to report abuses? Should we impose additional penalties, beyond de-enrollment from the program, to discourage program abuse?

68. With the growth of newly designated ETCs in a number of States, there may be a need for a more rigorous audit program to provide assurance that new participants have established adequate internal controls to meet their obligations. For that reason, we propose that all new ETCs be audited after the first year of providing Lifeline-supported service. We seek comment on the appropriate geographic scope of the initial audit. How should such audits be designed to ensure that any problem areas are easily and thoroughly identified? Most audits examine an ETC's compliance with a wide variety of Commission requirements. Should initial audits focus on a smaller number of more important requirements, and if so, which ones? Although we seek comment on more rigorous, focused audits for new program participants, we note that we will also continue to direct USAC to conduct random audits to ensure ongoing compliance with our rules.

69. We also seek comment on how to improve the Commission's directive to USAC to establish a systematic approach to assessing internal controls and learning from audit findings. For example, we propose that negative audit findings above a specified dollar threshold, or impacting a specific percentage of an ETC's Lifeline customers, trigger shorter intervals between audits, an expanded audit for the company at issue, and/or an additional audit the following year in the relevant study area. What should that dollar threshold be? Would the cost associated with such audits outweigh the benefits that would accrue? What follow-up should the Commission require of USAC in light of negative Lifeline/Link Up audit findings?

70. We also seek comment on appropriate Commission responses to multiple findings of non-compliance, including repeated non-compliance above the specified thresholds or multiple findings of non-compliance with Lifeline or Link Up requirements in a single audit.

71. The Commission's rules already direct USAC to "suspend or delay discounts, offsets and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets and support amounts provided upon reasonable request." Should we establish a threshold (either aggregate dollar amount or percentage of support payments) that would automatically result in a freeze on future payments from the program until the carrier remediates identified issues? Under what circumstances should we consider revoking an ETC's grant of forbearance or designation as an ETC? We seek comment on other consequences that should result from negative audit findings.

72. In 2005, the Commission sought comment on subjecting all USF recipients to independent audits, but ultimately did not adopt any such requirement. In light of increased concerns about potential waste, fraud, and abuse in the program, we again seek comment on whether to require some or all ETCs in the program to engage an independent firm to assess compliance with the program's requirements. If we were to impose such a requirement, how often should we require the review (*e.g.,* annually, or every few years)? Should all ETCs that participate in the program be subject to the requirement, or only some? If we were to limit this requirement to only certain ETCs, what would be the appropriate criteria for imposing such a requirement? For example, we might impose the requirement on ETCs that have been found to have committed violations in the past, that receive more than a particular amount of program support, or that have experienced significant increases in program support. Audits paid for by the ETCs could create a self-policing environment that would guard against waste, fraud, and abuse, but would also impose an expense on providers. We seek comment on the advantages and disadvantages of such a system, and on the burden of such a requirement on different carriers, including small ETCs. Commenters should discuss whether a lack of negative audit findings, or alternatively, proof of resolution of all negative findings, should impact the scope or frequency of future audits. We also seek comment on what type of audit engagements should be required, if we were to adopt such a requirement. If we were to adopt such a requirement, we propose to mandate that covered ETCs provide audit reports to the FCC, USAC, and relevant States, and that the FCC and USAC should be deemed authorized users of such reports.

IV. Clarifying Consumer Eligibility Rules

A. One-per-Residence

73. In this NPRM, we propose to adopt a one-per-residential address requirement in section 54.408 of our rules. We seek comment on whether codifying this requirement as "one-per-residence" would aid in administration of the requirement by providing a bright line that could be determined by reference to external sources. The Commission has not codified any definition of a "household" for purposes of Lifeline and Link Up, and various qualifying programs may utilize different definitions of households. We also note that in other contexts, consumers seeking benefits from State or other Federal assistance programs may undergo a more robust process to qualify for benefits, such as an interview by social service agencies to determine eligibility, which may provide an additional level of assurance that the applicant in fact complies with relevant program criteria. We seek to adopt a rule that provides a bright line that is easy for USAC and ETCs to administer.

74. The one-per-residential address rule that we propose to adopt is consistent with our existing single-line per residence requirement. But some ETCs dispute the validity of the single-line-per residence limitation, which raises concern that they are not adhering to an existing requirement that is designed to minimize waste, fraud and abuse; target support where it is needed most; and maximize the number of Americans with access to communications services. As noted above, it may be necessary for the Commission to take action on an interim basis while this proceeding is pending to address concerns with USAC reimbursing ETCs for duplicate claims.

75. We understand that there may be situations—such as residents of commercially zoned buildings, those living on Tribal lands, and group living facilities—where application of the one-per-residential address rule may produce unintended consequences that would deprive deserving low-income consumers of the support that they otherwise would be entitled to. We encourage ETCs, Tribal Communities, the States and other interested parties to

provide input on a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud and abuse.

76. We seek comment on how best to achieve the purposes for which the single line per residence requirement was designed. We propose to maintain this longstanding requirement, which balances our statutory obligation to ensure that low-income consumers have access to phone service at reasonable rates and to ensure that support is sufficient, but not excessive. We seek comment below on how to define a "residential address" for the purposes of the Lifeline and Link Up programs. We also seek comment on how best to interpret the one-per-residential address restriction in light of current service offerings and in the context of group living arrangements or other situations that may pose unique circumstances."

77. In addition, we seek input on whether a different approach would better serve the needs of low-income consumers in light of our statutory obligations, as well as the changing communications marketplace. We note that several commenters in the Joint Board proceeding suggested that the Lifeline/Link-Up program should provide support for one wireless service per eligible adult, rather than one service per residential address, with some suggesting that would be in keeping with the statutory principle that low-income consumers should have access to services that are reasonably comparable to the services enjoyed in urban areas. This approach would take into account the fact that telephone use has changed since we first implemented the 1996 Act. Fifteen years ago, wireless service was not a mainstream consumer offering; today, 93 percent of the general population has wireless service. At the same time, providing support to each low-income adult rather than to each residential address could significantly increase the size of the program. Would allowing support for one wireless subscription per eligible adult be inconsistent with our statutory obligation to ensure that support is sufficient, but not excessive? We seek comment on whether the benefit that wireless service affords low-income consumers outweighs concerns associated with growth of the fund. If the funding dedicated to the program were capped, as discussed more fully below, a one-per-adult rule would likely mean that a much smaller benefit would be available to each program participant than under a one-per-residential address rule. We seek comment on these issues.

1. Defining "Residence"

78. We propose a rule in section 54.408 to limit program support to a single subscription per U.S. Postal Service address, and seek comment on whether this approach would promote affordable access to telephone service consistent with the goals of section 254. Under this proposal, where unrelated individuals and/or families share a U.S. Postal Service address, such individuals and/or families would be limited to one subscription for that "residence." We seek comment on whether this approach best serves program goals. The program was established to ensure that all consumers, even those of limited means, would have a "lifeline"—a basic telephone service to connect them to the rest of society. Supporting one service at each residential address may effectively fulfill this goal, and may also help prevent waste and abuse of program resources. Moreover, this approach may be more administratively feasible than other options for defining who is eligible for support, such as family-based definitions that require an accurate determination of whether people living together are independent or related.

79. Pursuant to this proposal, upon receiving an application for Lifeline support, an ETC could use the U.S. Postal Service residential address as a proxy to determine whether the ETC is already providing Lifeline support to that address. If so, the ETC would reject the application for support. Additionally, as discussed *infra,* we propose to require that Lifeline subscribers initially certify when applying for service, and thereafter verify annually, that they are receiving support for only one line per residential address (defined for these purposes as all of the persons who reside at a unique U.S. Postal Service address).

80. We recognize that there may be some residences for which there is no unique U.S. Postal Service address. For example, we understand that there are apartment buildings where the residents live separately, but their units lack distinct identifiers and mail is delivered to and distributed by a single point of contact such as the building manager. Similarly, when multiple persons or families share a residence, unique addresses may not be available. Customers in rural areas may share a rural route address. We seek comment on what actions could be taken in such situations to ensure that Lifeline and Link Up benefits are available to eligible consumers. Is there other information that a carrier could collect to verify that the residence does not already receive support from the program? Alternatively, if one subsidized service were available for such locations, would that satisfy the congressional goal of ensuring affordable access to telephone service?

81. As noted above, some customers rely on a P.O. Box rather than a U.S. Postal Service residential address. How should we determine eligibility in those situations? Should we require ETCs to collect additional verifying information, and if so, what?

82. Our rules also limit support to the subscriber's principal residence. We seek comment on how to ensure that a subscriber does not obtain support at more than one location. We propose that each subscriber provide unique identifying information (as discussed in Section IV) to prevent the same subscriber from receiving support at multiple locations. We seek comment on this proposal. We also seek comment on whether we should require subscribers to certify that the address provided is their principal residence, in order to receive Lifeline and Link Up support.

83. We seek comment on whether our U.S. Postal Service address-based proposal should be modified to accommodate different types of living situations, and if so, how. For example, should the proposed definition of "residential address" be modified to accommodate certain living arrangements? Should there be an exception for unrelated adult roommates or multiple families sharing a residence? Should we allow more than one discount per residence in the case of multi-generational families, for example if the low-income family includes an eligible adult child or elderly relative? Commenters that propose a different definition of "residence" from the one we propose above, or exceptions to that definition, should explain how the Commission could ensure, in administratively feasible ways, that support is being provided appropriately, however that term is defined.

2. Application of the One-per-Residence Rule to Commercially Zoned Buildings

84. Although the Commission's rules provide low income support for residential customers, the Commission has learned of instances where otherwise eligible applicants have been denied Lifeline and Link Up service because they live in facilities that are zoned for commercial, rather than residential use. This may occur, for example, when individuals reside in single-room occupancy buildings, lodging houses, rooming houses,

shelters, and other group quarters. This appears to be a particular problem in urban areas.

85. We seek comment on how we can ensure that consumers have access to low-income support even if they reside in a commercially-zoned location. We note that commercial residences tend to be group living facilities rather than individual residences. If the Commission adopted special rules for group living facilities, would those rules resolve concerns about providing support to eligible subscribers who live in commercially-zoned areas? Are there additional steps we should take to verify that Lifeline and Link Up subsidies are not being provided to commercial entities?

3. Application of the One-per-Residence Rule in Tribal Communities

86. On some Tribal lands, several households may occupy a single housing unit. We seek comment on whether we should adopt a special definition of "residence" on Tribal lands that will ensure that Lifeline and Link Up service is provided to eligible consumers. For example, to the extent there are multi-generational families sharing a residence in Tribal communities, should there be an exception to our proposed one-per-residence rule? How can the Commission ensure that the program does not provide duplicative support to households on Tribal lands? In order to craft a rule that appropriately takes into account conditions on Tribal lands, we seek additional information about housing arrangements in Tribal areas.

87. Some commenters responding to the "*One-Per-Household*" *Public Notice* state that residents of Tribal Lands frequently lack unique U.S. Postal Service addresses, and instead receive mail at communal P.O. boxes. We thus seek comment on how to apply the "one-per-residence" rule to Tribal lands if we were to adopt the proposal generally to define residential address on the basis of a U.S. Postal Service address. Given the very low telephone penetration rate on Tribal lands, we do not want our rules to impose barriers to consumers or households living on Tribal lands that are eligible for, and desperately need, Lifeline discounts. At the same time, we must act as responsible stewards of the Fund. If the Commission were to exempt Tribal members from providing a unique U.S. Postal Service address, what measures should the Commission adopt to guard against the possibility of waste, fraud, and abuse?

4. Ensuring Access for Residents of Group Living Quarters

88. Some commenters have suggested that the Commission should consider how better to ensure that the program is effectively serving low-income residents of group living quarters, such as residential facilities for seniors or for victims of domestic violence. We seek comment on how eligibility should be defined for residents of group living quarters, including the effects on eligibility when a resident moves out of a group living facility, and what measures are necessary to prevent waste, fraud, and abuse.

89. Under the proposed rule, related or unrelated, living together at a single postal address, residents of a group living facility—which could be dozens or even hundreds of individuals—would be eligible for only a single Lifeline supported service. Is this approach adequate to ensure availability of basic communications services to all Americans, including low-income consumers, as section 254 requires? If not, how should the program support service to low-income consumers residing in group living facilities? Should the program provide support to each separate and unrelated individual or family (*e.g.,* a married couple living together at a nursing home) living in group facilities?

90. Alternatively, should we create an exception to our proposed one-per-residence rule for eligible consumers in a group living facility to obtain Lifeline or Link Up service? Is there an administratively feasible way to approach this challenge that also provides protections against waste, fraud, and abuse? For instance, should we require the administrator of group living facilities to certify to ETCs and/or USAC the number of separate and unrelated individuals or families in the facility? In that situation, the facility would be responsible for applying for Lifeline/Link Up support on behalf of its residents. Under this approach, how could our rules ensure verification of the income eligibility of the subscribers for which a group facility is seeking support? Should the facility be required to provide the ETC documentation of the residents' eligibility?

91. Should we require that consumers residing in group facilities provide certification from facility staff that corroborates applicants' residence in a group living facility, as well as information about the number and types of persons served by the facility? Should the Commission set different eligibility criteria for permanent and temporary residents of group living facilities?

92. We seek comment on the feasibility of making Lifeline funding available to agencies or non-profit organizations that are able to provide communications services to residents of group living facilities. As the Joint Board acknowledged, such institutions do not qualify as ETCs eligible for support, and we therefore seek comment on the application of section 254(e) of the Act, which limits the recipients of universal service support to ETCs. If funding were made available to such organizations, what if any additional measures would be needed to guard against waste, fraud, and abuse? For example, in a situation where the applicant lacks a residential or mailing address, how would the ETC verify the customer's initial and ongoing eligibility for Lifeline services?

B. Tribal Lifeline Eligibility

93. It is well established that Federally recognized Tribes have sovereignty, and exercise jurisdiction over their members and territory with the obligation to "maintain peace and good order, improve their condition, establish school systems, and aid their people" within their jurisdictions. In 2000, the Commission formally recognized Tribal sovereignty in its *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes.* The Federal government also has a trust relationship with Indian Tribes, as reflected in the Constitution of the United States, treaties, Federal statutes, Executive orders, and numerous court decisions. Consistent with this relationship, the Commission, in its June 2000 *Tribal Order,* 65 FR 47941, August 4, 2000, adopted measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native Tribal communities. Accordingly, in the *Tribal Order,* the Commission modified its rules to create enhanced Lifeline and Link Up programs intended to provide access to telecommunications services for low-income consumers living on Tribal lands.

94. *Income-based eligibility.* The Commission's current rules regarding Tribal eligibility for Lifeline support have been subject to differing interpretations. Specifically, ETCs, USAC, and Tribal groups have indicated there has been inconsistency and confusion among Federal default and non-default states regarding whether residents of Tribal lands may qualify for participation in the program based on income, even though there is language in Commission orders so indicating.

95. We propose to revise sections 54.409(a) and 54.409(c) to more clearly reflect that residents of Tribal lands are eligible for Lifeline and Link Up support based on: (1) Income; (2) participation in any Tribal-specific Federal assistance program identified in our rules; or (3) any other program identified in section 54.409(b) of our Lifeline and Link Up rules. We seek comment on this proposal.

96. *Program-based eligibility.* Under section 54.409 of the Commission's rules, participation in the Federal Food Stamp Program (or the Supplemental Nutrition Assistance Program (SNAP) as it is currently named), qualifies residents of Tribal lands for Lifeline/Link Up support. The Lifeline/Link Up rules do not, however, grant eligibility based on participation in the Food Distribution Program on Indian Reservations (FDPIR), a Federal program that provides food to low-income households living on Indian reservations, and to Native American families residing in designated areas near reservations and in the State of Oklahoma. As discussed more fully below, eligible residents of Tribal lands for the purposes of the Lifeline/Link Up program are qualifying low-income households on a reservation, where "reservation" is defined as any Federally-recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, and Alaska Native regions.

97. The service and eligibility criteria for FDPIR are similar to those of SNAP, and are based on income levels that must be recertified on a periodic basis. A household may not participate in both FDPIR and SNAP, and any given reservation could have certain households participating in FDPIR and others participating in SNAP. Approximately 276 Tribes currently receive benefits under FDPIR, suggesting that there are households on Tribal lands that are not be served by the Lifeline/Link Up program simply because they have chosen to receive FDPIR benefits instead of SNAP benefits. Further, we understand that Tribal elders, a particularly vulnerable population, often seek FDPIR benefits rather than SNAP benefits. As such, allowing residents on Tribal lands to qualify for low-income support based on participation in FDPIR is consistent with the purpose of the current Tribal eligibility criteria, furthers the goal of providing access to telecommunications services by low-income households on Tribal lands, and the goal of targeting those in the greatest need.

98. Accordingly, we propose to amend section 54.409(c) of the Commission's rules to allow program eligibility for residents of Tribal lands participating in FDPIR. We seek comment on this proposal. We also seek comment on whether there are any other Federally- or Tribally-administered, income-based assistance programs, such as those focused on the elderly, which should be included in our program eligibility rules for residents of Tribal lands.

99. *Location-based conditions.* In the *Tribal Order,* the Commission defined the terms "Tribal lands," "reservation," and "near reservation" for the purposes of establishing eligibility for the Tribal Lifeline and Link-Up programs. Specifically, the Commission modified its rules to provide support to individuals residing on "any federally recognized Indian [T]ribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims settlement Act (85 Stat. 688), and Indian allotments," as well as those residing in "those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior's Commissioner of Indian Affairs, and whose designations are published in the Federal Register."

100. In its August 2000 *Tribal Stay Order and Further Notice,* 65 FR 58721, October 2, 2000, however, the Commission stayed implementation of the Tribal Lifeline and Link Up programs as they applied to qualified low-income households "near reservations." The Commission noted that, after its adoption of the definition of "Tribal lands" in the *Tribal Order,* it learned that the term "near reservation," as defined by the Bureau of Indian Affairs (BIA), might include "wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link[-]Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership." Accordingly, in its *Tribal Stay Order and Further Notice* and its May 2003 *Second Tribal Order,* 68 FR 41936, July 16, 2003, the Commission sought comment on how to identify geographic areas adjacent to reservations that share similar characteristics with the reservations. Since then, the Commission has not taken further action regarding the definition of "near reservation," and currently provides enhanced low-income support only to those living on, not near, Tribal lands.

101. We now propose to amend section 54.400(e) of our rules to remove the term and definition of "near reservation," as its inclusion in the rules creates confusion. We also propose to adopt a new rule section 54.402 to adopt a designation process for those Tribal groups and communities seeking designation as Tribal lands under the Commission's rules. We seek comment on this proposal. The designation process we propose is consistent with the process recently proposed by the Commission in the *Rural Radio Service Second R&O.* That Order addresses the definitions of "Tribal lands" and "near reservation areas" for the purpose of determining whether a radio station application seeking to serve a Tribal community of license is a "licensable community" that qualifies for special consideration. The Commission adopted a process whereby an applicant seeking to establish eligibility may submit any probative evidence of a connection between a defined community or area and the Tribe itself. We propose to adopt a similar process for Tribal groups and communities seeking to receive Lifeline and Link Up support, but whose land is not defined by section 54.400(e). Use of such a process would serve the public interest by affording flexibility to Tribes in non-landed situations, particularly given that the circumstances of such Tribes are so varied.

102. We propose to delegate authority to resolve such designations to the Wireline Competition Bureau. We propose that such a request to designate an area as a Tribal land for purposes of Lifeline and Link Up should be formally requested by an official of a Federally recognized Tribe who has proper jurisdiction. The request should explain why the communities or areas associated with the Tribe do not fit the definition of Tribal lands set forth in the Commission's Lifeline/Link Up program rules, but which are regions so Native in their character or location, as to support the purpose of providing enhanced Tribal Lifeline/Link Up program support. A showing should also detail how providing program support to the area would aid the Tribe in serving the needs and interests of its citizens in that community, and thus further the Commission's goals of providing Tribal support. Most probative would be evidence that a Tribe delivers services to the area at issue. However, the Tribe could offer other evidence, including the Federal government's provision of services to Tribal members in the identified area. Probative evidence might also include a showing that the Census Bureau defines the area as a Tribal service area that is used by agencies like the Department of Housing

and Urban Development. Further, persuasive evidence of a nexus between a community and a Tribe might also include showings that a Tribal government has a defined seat, such as a headquarters or office, in the area, combined with evidence that Tribal citizens live and/or are served by the Tribal government in the area at issue. A Tribe might also provide evidence that a majority of members of the Tribal council or board live within a certain radius of the area. An applicant might also show that more than 50 percent of Tribal members live exclusively in the geographical area. Additionally, Tribes might provide other indicia of a connection, such as Tribal institutions (*e.g.,* hospitals or clinics, museums, businesses) or activities (*e.g.,* conferences, festivals, fairs). We seek comment on any other factors that could help determine whether a geographical area is predominantly Tribal, such that low-income residents in the area should receive the benefits of enhanced Tribal program support.

103. In addition to the showing required, it is important that an applicant seeking to take advantage of enhanced Tribal program support set forth a clearly defined area to be covered. The need for such a demonstration is in line with the purposes of enabling Tribes to serve their citizens, to perpetuate Tribal culture, and to promote self-government. In evaluating such requests, we propose to delineate the "Tribal Lands" equivalents as narrowly as possible and view most favorably proposals that describe narrowly defined Tribal lands, to enable the provision of services to Tribal citizens rather than to non-Tribal members living in adjacent areas or communities. We seek comment on this proposal.

104. *ETC Designation on Tribal lands.* Additionally, we acknowledge that carriers serving households residing on Tribal lands could benefit from greater clarity regarding the ETC designation process for Tribal lands. However, as this issue has broader applicability beyond just the Lifeline/Link Up program, the corresponding issues and request for comment are addressed in the Office of Native Affairs and Policy's *Native Nations Notice of Inquiry.* For example, the *Notice of Inquiry* seeks comment on how specific an ETC designation including Tribal lands should be, particularly for carriers seeking designation for the sole purpose of participating in the Lifeline program. The *Notice of Inquiry* also seeks comment on the nature of consultation with Tribal governments that should be included in the ETC designation process and whether carriers and Tribal governments should be required to file a proposed plan to serve with the Tribal lands. Finally, the *Notice of Inquiry* seeks comment on whether varying amounts of Lifeline support should be available on Tribal lands. We also seek comment on these issues and on the Lifeline program proposals contained in the *Native Nations Notice of Inquiry.*

105. *Self-Certification of Tribal land residence.* Section 54.409(c) of the Commission's rules require that ETCs offering Lifeline services to residents of Tribal lands must obtain the consumer's signature on a document certifying that the consumer receives benefits from at least one of the qualifying programs and lives on a reservation. On April 25, 2008, Qwest Communications International Inc. (Qwest) filed a request for review of certain USAC audit findings. The USAC audit found that, among other things, Qwest provided Tier 4 support for subscribers who were not residing on eligible Tribal lands and did not provide Tier 4 support to subscribers who were eligible residents of Tribal lands. Qwest asked the Commission to find that USAC erred when it concluded that Qwest is inappropriately seeking enhanced Lifeline support for customers that do not reside on Tribal lands. Qwest argued that it has fulfilled its obligation to ascertain whether a customer lives on a reservation by obtaining a signed certifications stating that the customer lives on a reservation. USAC responded that Qwest should establish additional controls. The Commission sought comment on the Qwest Petition in 2008.

106. As discussed above, Tribal land addresses are often not straightforward. AT&T and the US Telecom Association (USTelecom) filed comments supporting Qwest, stating that the Commission did not intend ETCs to take additional steps beyond obtaining a self-certification, to determine whether an applicant lives on Tribal lands. Alltel Communications, LLC (Alltel, which subsequently was acquired by Verizon), Rural Cellular Corporation (Rural Cellular), and Smith Bagley, Inc. (SBI) also filed reply comments supporting Qwest. Alltel acknowledged that Tribal lands are historically underserved areas in which residents and experience very low telephone penetration rates. Alltel argued that an increased burden on ETCs to verify Tribal residency would not improve service on Tribal lands, but would only serve to discourage ETCs from serving these areas as conducting additional verification procedures is very challenging due to the unique living arrangements and identification practices of many Tribes. For example, the Rosebud Sioux Tribe acknowledged that there are no physical addresses on the Rosebud Indian Reservation. Additionally, the Spirit Lake Tribe stated that all mail sent to the reservation is addressed to P.O. Boxes or General Delivery.

107. We propose to amend section 54.409(c) of the Commission's rules to disallow self-certification of income or program eligibility for residents of Tribal lands receiving Lifeline/Link Up support, consistent with our proposal below to require all Lifeline/Link Up recipients to provide proof of income or participation in a qualifying program. We propose to require a consumer receiving low-income support and living on Tribal lands to show documented proof of participation in an eligible program or eligibility based on income, like all other low-income consumers as there do not appear to be unique reasons why Tribal households should be exempt from a general requirement to produce documentation of qualification for program support. We seek comment on this proposal.

108. We do, however, recognize there may be challenges in verifying Tribal residency due to unique living arrangements on Tribal lands, and therefore maintain the self-certification requirement as to Tribal land residence. We propose to clarify that receipt of self-certification of residence on Tribal lands, along with documentation of income or participation in an eligible program, is sufficient documentation for an ETC to provide enhanced Lifeline support. The current rules do not require the ETC to establish further verification processes or controls to ascertain that the customer is a Tribal member or lives on Tribal lands before providing enhanced Lifeline support. We seek comment on this proposed clarification.

V. Constraining the Size of the Low-Income Fund

109. We are mindful of the impact of the growth in the program on the consumers and businesses that ultimately support USF through fees on their phone bills. As we undertake comprehensive reform and modernization of USF, we are committed to controlling costs and constraining the overall size of the Fund. Many of the proposals contained herein to eliminate waste, fraud, and abuse and improve program administration could reduce expenditures and the size of the program. For example, eliminating duplicate claims and tightening our rules on customary charges eligible for Link Up support should result in

reduced expenditures. We note that fund growth is not necessarily indicative of waste, fraud, and abuse. We recognize that demand for low-income support fluctuates based on a number of factors, including changes in qualifying assistance programs and macroeconomic conditions. We also note that the program has an ultimate cap in that only a defined population of eligible low-income households may participate in the program, and support is limited to a maximum of $10 per month per household (other than on Tribal lands). We seek comment generally on how to balance these principles, while retaining our commitment to enabling households in economic distress to obtain access to essential communications services.

110. In light of concerns about the growth of Lifeline/Link Up, we seek comment on a proposal to cap the size of the Lifeline/Link Up program, for example at the 2010 disbursement level of $1.3 billion. We ask whether and how a capped fund could continue to ensure telephone access for low-income households and support potential expansion for broadband as discussed below. We seek comment on whether any cap should be permanent or temporary, perhaps lasting for a set period of years or until the implementation of structural reforms proposed in this NPRM.

111. If the Commission were to cap the program, either as an interim measure or permanently, what would be an appropriate cap level? How should such a level be determined? For example, should it be higher or lower than the 2010 size of the program? Should a cap be indexed to inflation, similar to other USF program funds subject to caps, or adjusted based on unemployment rates? We seek comment on whether there should be exceptions to a cap. For example, should low-income support for eligible residents of Tribal lands be exempt, given the very low telephone penetration rate on Tribal lands, as well as the unique circumstances and challenges faced by residents of Tribal lands? If we were to adopt a cap, should that cap be adjusted, for instance, if national or local unemployment exceeded a specified level?

112. We also seek comment on the appropriate way to administer a cap. Is a national cap more efficient, or would a State-by-State cap be a more equitable way to administer the Low Income program fund? As noted above, the Act contemplates achieving reasonably comparable access in all regions of the country. Should regional differences be accounted for under a cap?

113. If the Commission were to cap the program, we may also need to implement methods for prioritizing support among potential recipients. Should current participants in the program receive priority funding within a capped system? Alternatively, should funding be available on a first-come, first-served basis after a specified date for re-enrollment in the program? If so, given that disbursements vary monthly, how could ETCs be notified when the cap had been reached? If a participant loses services for any reason, such as non-use, should that participant necessarily receive funding upon re-enrollment, or would that person potentially have to wait until the next funding year? Should monthly benefits be reduced to ensure that all eligible households that seek to participate in the program can do so, even if they would receive a smaller benefit than program participants currently receive? We seek comments on these issues and other practical and operational issues that would need to be addressed if the program were capped.

114. If the Commission adopts a rule capping the low-income fund, should that cap be maintained if the Commission decides to support broadband with program funds? Would the inclusion of broadband necessitate different a different approach to prioritizing benefit allocations?

VI. Improving Program Administration

115. In this section, we seek comment on how to improve key aspects of the current administration of Lifeline/Link Up, consistent with our goals of reducing waste, fraud, and abuse and modernizing the program. As discussed above, the Commission has historically provided considerable discretion to the States to administer key aspects of the program, such as eligibility, enrollment, and ongoing verification of eligibility. In order to bolster oversight of this Federal program, we propose a core set of Federal eligibility, certification, and verification requirements that would apply in all States, while seeking comment on allowing States to adopt additional measures that could complement the Federal standards. Specifically, we propose to eliminate the option of self-certifying eligibility and to require all consumers in all States to present documentation of program eligibility when enrolling. We propose to increase sample sizes for ongoing verification and to require ETCs in all States to submit verification data to USAC and the Commission.

116. We also seek comment on ways to reduce barriers to participation in the program by service providers and low-income households, specifically through the use of coordinated enrollment with other social service assistance programs and the development of a national database that could be used for enrollment and verification of ongoing eligibility. These proposals are intended to improve administrative efficiency, improve service delivery, and protect and improve program access for eligible beneficiaries.

A. Eligibility Criteria for Lifeline and Link Up

117. We propose to amend our rules to require all States to utilize, at a minimum, the program criteria currently utilized by Federal default states. We further propose to allow States to maintain existing State-specific eligibility criteria that supplement the Federal criteria. Currently, some States' criteria are more permissive than the Federal criteria. For example, Georgia extends program eligibility to senior citizens participating in low-income discount plans offered by local power and gas companies. If we were no longer to allow States to utilize these existing State-specific eligibility criteria, current subscribers would become ineligible for Lifeline benefits, which could result in considerable consumer disruption. We seek comment on whether, going forward, States should be able to impose additional permissive eligibility criteria they deem appropriate, so long as these additional eligibility criteria are reasonably tied to income and the State in question provides additional monetary support to supplement the Federal support. We recognize that more permissive eligibility criteria could increase the number of Lifeline subscribers, and seek comment on how to strike the right balance between national uniformity and State flexibility to address local circumstances. We further seek comment on the nature and magnitude of the potential impact, costs, and benefits of imposition of our proposed minimum eligibility requirements.

118. Today, ETCs operating in multiple States have to develop State-specific policies and procedures to assure compliance with State-specific program eligibility requirements. More uniform eligibility requirements could potentially lead to more streamlined and effective enrollment of eligible consumers, while lessening regulatory burdens on service providers. Moreover, as we explore cost-effective ways to strengthen the process of certification and validation of household eligibility, more uniform requirements could also lessen administrative costs for the program and facilitate more effective

monitoring and auditing. We ask whether requiring all States to utilize the Federal eligibility criteria would simplify ETC processes for enrolling eligible households and verifying ongoing eligibility.

119. Would establishing a Federal baseline of eligibility criteria place any burdens upon the States? What administrative changes would be required in those States where enrollment and ongoing verification of eligibility functions are performed by a State governmental agency or third-party administrator? Would any such burdens be justified by the benefits of a minimum uniform system? From the perspective of States or service providers, what are the benefits or burdens of maintaining the current system in which requirements vary from State to State? We ask whether allowing States to maintain and add permissive eligibility criteria beyond any minimum uniform criteria would prevent existing eligible Lifeline customers from losing Lifeline support. Finally, we ask whether a Federal baseline of eligibility criteria would increase program participation.

120. In its *2010 Recommended Decision,* the Joint Board also recommended that we seek comment on raising the program's income eligibility criteria of 135 percent or below of Federal Poverty Guidelines to 150 percent or below of the FPGs. We seek comment on raising the Federal income threshold for program participation to 150 percent or below of the Federal Poverty Guidelines. Some Federal programs linked by the low-income program, such as LIHEAP, already have a 150 percent threshold. A number of commenters in the Joint Board proceeding urged that the income eligibility standard be increased in 150 percent. The FPG formula has been criticized as dated and inaccurate, with the Consumer Groups noting that some studies have suggested income levels for economic "self-sufficiency" at 161 percent of the poverty level. In 2004, the Commission sought comment on whether the income-based criteria for Federal default states should be increased to 150 percent of the Federal Poverty Guidelines. At that time, the Commission presented a staff analysis that concluded that raising the income threshold might only have minimal on telephone penetration rates, but could result in many new Lifeline subscribers, potentially resulting in an additional $200 million in demand for Lifeline. We seek to update the record on this issue. We also seek comment on lowering the threshold from the current level (135 percent of the FPG).

B. Certification and Verification of Consumer Eligibility for Lifeline

121. The applicability of Federal and State rules governing initial certification and ongoing verification of consumers' eligibility for support currently depends on whether the customer resides in a Federal default state or non-Federal default state. Accordingly, ETCs providing service in multiple States may be required to comply with various State and/or Federal certification and verification procedures. "Certification" refers to the initial determination of eligibility for the program; "verification" refers to subsequent determinations of ongoing eligibility.

122. We believe it is time to take a fresh look at these rules, taking into account both our experience with the program over the past 15 years and the many changes in service offerings since the program began. Our analysis is informed by the Joint Board's Recommended Decision, and by the recent GAO review of the program. According to GAO, some States find that consumers are deterred from enrolling by the difficulty of certification and verification procedures. GAO also notes that there are risks associated with the self-certification of subscriber eligibility and the accuracy of amounts claimed by ETCs for reimbursement. Our proposals are intended to improve the integrity of the program by improving Federal requirements and introducing greater consistency throughout the country. We seek to balance the need to ensure that the program supports only intended beneficiaries, with the need for administratively workable requirements that do not impose excessive burdens or costs.

123. *One-per-residential address certification and verification.* We propose to amend section 54.410 of our rules to require that all ETCs obtain a certification when initially enrolling a subscriber in Lifeline that only one Lifeline service will be received at that address. We also propose to amend section 54.410 of our rules to require that all ETCs obtain a certification from every subscriber verified during the annual verification process that the subscriber is receiving Lifeline support for only one line per residence. Requiring "one-per-residence" certification initially at sign-up and then on an ongoing basis should highlight and remind the consumer that support is available for only one line per residence and reduce inadvertent program violations. We seek comment on these proposals.

124. The form used for such certification shall explain in clear and simple terms that this Federal benefit is available for only one line per residence, and that consumers are not permitted to receive benefits from multiple providers. Further, the certification form shall contain language stating that violation of this requirement would constitute a violation of the Commission's rules and may constitute the Federal crime of fraud, which will be prosecuted to the fullest extent. We seek comment on this proposal and ask whether there is any other language that should be required on the form.

125. We propose that compliance with the one-per-residence rule shall be verified annually, using the same procedures and forms described above. Annual one-per-residence verification results should be reported along with the sampling data to USAC and the Commission, as discussed more fully below. Finally, any subscriber indicating they are receiving more than one subsidy per address shall be de-enrolled pursuant to the process for duplicates described above. Any non-responders shall also be de-enrolled pursuant to the termination process identified in our rules. We seek comment on these proposals.

126. *Modifying certification procedures.* We propose to amend section 54.409(d)(1) to eliminate the self-certification option and require all consumers in all States to present documents to establish eligibility for the program. We are concerned that the self-certification process does not provide adequate assurance that support is being provided only to qualifying customers. Self-certification offers minimal protection against those intentionally seeking to defraud the program and fails to exclude customers that are not eligible to participate but simply misunderstand the eligibility requirements. This proposal would reduce the number of ineligible consumers in the program and reduce opportunities for waste, fraud, and abuse.

127. We seek comment on this proposed rule change to eliminate self-certification for program eligibility. Will the rule change help identify and eliminate ineligible consumers from enrolling in the program? To the extent that any commenter opposes this proposed change, we encourage alternative suggestions that we could implement quickly to reduce opportunities for ineligible customers to participate in the program. We seek comment on whether this proposed change would present an undue burden on ETCs and/or consumers.

128. We also propose to amend section 54.409(d)(3) to require that a

consumer notify the ETC within 30 days if the consumer has knowledge that he or she no longer qualifies for Lifeline program support. A consumer would be required to notify its carrier upon knowledge that they no longer meet the income criteria, no longer participate in a qualifying program, are receiving duplicate support, or otherwise no longer qualify for program support. We seek comment on this proposal.

129. *Modifying annual verification procedures.* We are concerned that although the current sampling methodology for Federal default states may provide some insights into the percentage of ineligible subscribers for a given ETC, we are concerned that it may not adequately protect the program from waste, fraud, and abuse as it does not result in de-enrollment of all ineligible subscribers.

130. We propose changes to our annual verification procedures in three areas. First, consistent with the Joint Board's recommendation, we propose to amend section 54.410 of the Commission's rules to adopt a uniform Federal rule to serve as a minimum threshold for verification sampling. Second, we propose to require ETCs to de-enroll from the program consumers who decline to respond to an ETC's verification attempts. Third, consistent with the Joint Board recommendations, we propose uniform procedures for the collection and submission of verification data across all states. We seek comment on these proposals and ask whether there are other verification issues for which we should consider adopting a set of uniform procedures. We also seek comment how these proposals would impact existing ETC compliance plans for specific wireless providers.

131. We propose that these uniform minimum standards apply to all ETCs in all states regardless of any variances in state eligibility criteria. We recognize that individual states may have state-specific Lifeline programs, and therefore may have concerns that are not applicable to ETCs in all states. Therefore, we propose that states be allowed to implement additional verification procedures beyond the uniform minimum required procedures to accommodate those differences. We seek comment on this proposal. We also seek comment on whether there are any state verification processes that would be useful to adopt as a minimum uniform verification requirement to be applicable in all states.

132. The Joint Board also recommended that "states be allowed to utilize different and/or additional verification procedures so long as those procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures." We seek comment on this proposal. For commenters that support this option, how, if at all could the Commission monitor whether different state procedures are "at least as effective" as the Federal standards? Would this proposal adequately address our concerns about the administrative burdens created by inconsistent standards among states?

133. *Uniform sampling methodology.* We propose to amend section 54.410 of the Commission's rules to establish a uniform methodology for conducting verification sampling that would apply to all ETCs in all states and provide additional protections against waste, fraud and abuse.

134. As noted above, the Commission's rules require ETCs in Federal default states to implement procedures to verify annually the continued eligibility of a statistically valid random sample of Lifeline consumers and provide findings to USAC. The Commission has previously specified that the size of annual samples should be based on a number of factors, including the number of Lifeline subscribers served by the ETC and the previously estimated proportion of Lifeline subscribers served that are "inappropriately taking" Lifeline service. The Joint Board recommended that the Commission reconsider the equation used to calculate acceptable sample sizes, suggesting that current samples are not large enough to reveal the percentage of ineligible consumers receiving support. The Joint Board also stated that a uniform minimum standard for conducting the "statistically valid random sample" would help ensure accuracy, improve consistency among the sampling data, and assist in analyzing regional and national verification issues.

135. There are several potential issues with our current sampling methodology. First, although our calculation method is designed so that poor results from prior years require an ETC to sample a larger number of customers in following years, the current methodology assumes that no more than six percent of customers would be found ineligible in any given year. As such, the tables that many ETCs use to determine the number of customers they must survey do not contemplate a situation in which more than six percent of customers are found ineligible. To illustrate the point, the minimum number of customers surveyed increases as the number found ineligible in the previous year increases from zero to fifty percent. However, because our instructions set a "cut off" of six percent ineligible, an ETC with 400,000 Lifeline subscribers (half of whom were estimated to be ineligible) would only need to survey 244 customers. As such, some ETCs may be sampling too few customers for their annual verification survey results to be statistically valid.

136. Second, our current methodology creates little incentive for the ETCs to obtain responses from all consumers in the sample; the only consequence for non-response is to de-enroll an admittedly small number of consumers in the sample population. The penalties for non-response largely fall on the subscriber (who may lose service despite eligibility), while there is little incentive for the ETC to educate customers about the importance of a prompt response.

137. Third, a statistically valid sample by definition provides only a basis for estimating the total number of ineligible consumers for a particular ETC; it does not result in de-enrollment of *all* (or even most) ineligible subscribers for that ETC. A hypothetical example illustrates the problem: If the annual verification survey estimates that half of a large ETC's customers are ineligible in one year, the ETC need only survey 0.27% of its customers the following year. In other words, if an ETC has 400,000 Lifeline subscribers and half (or 200,000) were estimated to be ineligible, the ETC would only need to survey 1,082 Lifeline customers the following year for the sample to be statistically valid (and assuming the same ineligibility rate, would then de-enroll no more than half, or 541, of the sampled customers for ineligibility). In short, the current methodology fails to identify the ineligibles who are not part of the sample.

138. Given these potential issues, we propose to amend section 54.410 of the Commission's rules to establish a uniform methodology to be used by all states for determining minimum verification sample sizes to provide additional protections against waste, fraud and abuse. Specifically, we set forth two alternative proposals for determining how many Lifeline customers an ETC must survey each year. The first alternative is a sample-and-census proposal, which would allow an ETC to sample its customers so long as the rate of ineligibility among responders to the survey is below a fixed threshold. If that ineligibility rate exceeds the threshold, however, the ETC would be required to take a census of all customers. The second alternative is to modify the current formula used in the Federal default states and apply it

uniformly to all states. Both alternative proposals are intended to address the three issues with our current sampling methodology, but in distinct ways. We describe each alternative below and invite comment on the relative advantages and disadvantages of these two alternatives.

139. We describe the possible implementation of the sample-and-census approach by providing an example using 5 percent as the threshold for a full census: Each year, ETCs would sample enough customers so that at least 300 customers respond to the verification survey; if the lower bound of the confidence interval for the estimate of ineligible subscribers is at or above 5 percent of total respondents, then the ETC would be required to take a census of all Lifeline customers that year and verify that each and every customer is eligible to participate in the Lifeline program. We seek comment on each component of the sample-and-census approach: (1) The minimum number of customers that must respond to the survey for each ETC, (2) the threshold rate that would determine when the number of ineligible respondents is unacceptably high, and (3) the census requirement to remove ineligible customers from Lifeline's rolls if that threshold is crossed.

140. First, we seek comment on the appropriate minimum number of respondents needed for an accurate sample. We note that under our current rules, an ETC with 400,000 Lifeline subscribers in a given state is required to sample no more than 244 customers, while an ETC with 10,000 subscribers is required to sample no more than 238 customers, and an ETC with 500 subscribers is required to sample no more than 164 customers. Our objective is to establish a minimum required number of respondents that would provide sufficient assurance that the results of the sample are indicative of the population at large, regardless of the expected margin of error. As set forth more fully in Appendix C, a sample size of 300 would have a margin of error no greater than 5.7 percent, regardless of the number of ineligibles ultimately identified. Thus, for instance, if there were 300 respondents, and the survey identified a 10 percent ineligibility rate, that would suggest the actual eligibility rate in the entire subscriber base is somewhere between 6.6 percent and 13.4 percent. Should we consider a larger or smaller sample size based on the number of Lifeline customers an ETC has in a state? Reducing the required number of respondents for smaller ETCs could result, for example, in sizably larger margins of error. On the other hand, a uniform number of respondents applicable to all ETCs could require smaller ETCs to survey all or most of their Lifeline customers each year, which could be burdensome. Such a requirement also could pose burdens to the extent that not all of the surveyed subscribers respond to the survey. Our goal is to establish a minimum number of respondents that is expansive enough to fully understand the scope of violations and de-enroll those who are ineligible, but that does not impose unnecessary costs on the program or on ETCs. We seek comment on how to appropriately balance the costs and benefits associated with implementing a standard minimum number of respondents, including the burdens that may be imposed on consumers as well as ETCs.

141. Next, we seek comment on the threshold rate that would be used to determine when the number of ineligible customers found in the survey warrants a full census. For these purposes, we distinguish between Lifeline subscribers that fail to respond to a verification attempt and those that are affirmatively are found to be ineligible. The example above set the threshold at 5% of respondents. Is this threshold appropriate? If not, what should be the triggering threshold? Should the threshold be higher in recognition of the fact that program rules allow a subscriber to remain in the program for a period of sixty days after becoming ineligible? Should it be lower, in order to further reduce waste, fraud, and abuse? In the same vein, should we establish an analogous threshold for the percentage of customers who do not respond to the ETC's verification survey? In other words, is there a level of non-responsiveness that should be deemed acceptable? If so, how could the Commission determine that threshold? If non-response rates exceed a specified threshold, should that level of non-response also trigger a full census, or are less burdensome measures to verify subscriber eligibility more appropriate.

142. Finally, we seek comment on the census component, *i.e.,* on the requirement that an ETC must verify the eligibility of all Lifeline customers in a state if the ineligibility rate of survey respondents exceeds the threshold. Should an ETC be required to conduct the census immediately, *i.e.,* within a specified number of months of completing the survey, or the following year (in place of the annual verification sample)? If the number of ineligible respondents found during the census exceeds the threshold rate, should the ETC be required to conduct another census the following year in lieu of a statistically valid sample? Should an ETC whose ineligibility rate exceeds the threshold be required to perform a census of all Lifeline customers each year until the ETC can establish that fewer than 5 percent of respondents are ineligible?

143. Should we establish another, higher threshold of ineligibility that would trigger a proceeding to determine whether that ETC's ability to participate in the Lifeline program should be revoked? For example, if two censuses in a row show that more then 10% of a particular ETC's Lifeline customers are ineligible, would that be evidence that the ETC has failed to implement adequate internal controls to assure compliance with Commission rules to such degree that it would be appropriate to revoke that ETC's designation to receive Federal Lifeline and Link Up support? If so, what would be the effect on subscribers receiving service from the offending ETC? For example, should subscribers be offered an automatic transfer to a different ETC or be required to re-enroll?

144. In the alternative, we seek comment on how to modify the current formula used in Federal default states and applying that revised formula in all states. We propose to eliminate the current cap on the estimated ineligibility rate of 6 percent. Should we require a larger sample size that would gradually increase the number of customers that an ETC must survey each year when a specified level of ineligibility is found? We recognize that a statistically valid sample is likely sufficient when the percentage of customers found ineligible is very low and the sample size is sufficiently large. But if the number of ineligible subscribers (including those that do not respond to the verification survey) becomes significant, should ETCs be required to verify eligibility of a proportionately larger number of customers than necessary for a statistically valid sample, to provide increasing incentives for the ETC to root out any potential waste, fraud, and abuse? We seek comment on potential modifications to the existing formula to better comport with our goals for revising the annual verification sampling procedures of ETCs.

145. We seek comment on both alternative proposals. To what extent would each proposal address the potential issues with today's methodology? Each proposal would eliminate the 6 percent "cut-off" that may distort the statistical reliability of today's sampling methodology. Each could incentivize ETCs to educate their customers and increase the response

rates of customers—the sample-and-census proposal would do so by putting the onus on ETCs to get a sufficient number of respondents, while a modified formula potentially could allow smaller verification surveys the following year if more customers respond to the verification survey. The first proposal includes a method for weeding out ineligible customers when one year's survey suggests that the number of ineligible customers is unacceptably high. Under the second approach, it could take several years to more fully identify ineligible subscribers for a given ETC and in the meanwhile, ineligible consumers would continue to receive support in contravention of our rules. We also acknowledge while our current statistical sampling methodology may work well for ETCs with a large number of subscribers, there is a risk of highly uncertain results for ETCs with small Lifeline subscriber populations.

146. We seek comment on these two proposals. We also seek comment on alternative proposals. Are there other ways to modify the current Federal methodology to improve it as we seek to make that the uniform minimum Federal standard in all states? We also seek comment on methods used by non-Federal default states to select a sample of subscribers that might provide a model for a uniform Federal standard. What sample size and confidence intervals are used by the various states that require statistical sampling?

147. *Procedures to be followed after sampling.* When an ETC samples its customers, there are three possible outcomes: (1) Some subscribers will not respond; (2) some respondents are eligible; and (3) other respondents are ineligible.

148. We propose to require ETCs to de-enroll from the program consumers who decline to respond to the ETC's verification attempts. Our rules require ETCs in all states and territories to terminate Lifeline service if the carrier has a reasonable basis to believe that a subscriber no longer satisfies the qualifying criteria. Codifying the specific requirement that they be de-enrolled for non-response in our rules would further protect the program from waste, fraud, and abuse. ETCs conducting verification surveys typically receive responses from only some of the consumers surveyed. We note that ETCs already routinely de-enroll customers that do not respond to the ETC's verification efforts, so this rule would not impose significant burdens on ETCs. We seek comment on this proposal.

149. *Collection and submission of verification sampling data.* Under current rules, the Commission has access to verification results only from ETCs in Federal default states and in a handful of states that require ETCs to submit information annually to USAC. The Joint Board noted that gathering the same minimal data from all states would provide the Commission a more complete picture of how the Lifeline program is utilized, and would help identify regional and national verification issues. A more comprehensive data set would also allow the Commission to continue refining its rules and policies to reduce waste, fraud, and abuse in the program. We propose to require all states to submit verification sampling data to USAC. We seek comment on this proposal.

150. Consistent with the Joint Board's recommendation, we seek comment on whether verification results submitted to USAC and the Commission should be shared with all states. The Joint Board also points out that making aggregate verification results available to the public could better inform interested parties about whether universal service funds are being used for their intended purposes. Accordingly, we seek comment on whether the Commission should periodically publish aggregated verification results. Finally, we seek comment on whether information relating to any other Lifeline or Link-Up eligibility criteria should be gathered by ETCs and submitted to USAC and the Commission during the certification and verification processes.

151. *Certification and verification best practices.* Consistent with the Joint Board's recommendation, we seek comment on states' certification and verification practices. The Joint Board noted that it received limited information regarding state certification and verification practices. More comprehensive data on states' practices would assist the Commission with establishing appropriate uniform minimum standards. Therefore, we seek to build the record regarding best practices for certifying and verifying household eligibility. We encourage states, ETCs, Tribal governments, consumer groups, and others to provide us with their experiences with different certification and verification procedures, and to identify those that could be adopted as uniform minimum standards for all states.

152. In particular, we seek data on how program eligibility is verified in particular states, how frequently verification is required, by whom verification is conducted, and the scope of the verification process (*e.g.,* the proportion of subscribers that are sampled). We also seek data on whether states impose different verification responsibilities on different types of carriers. For example, we understand that in some states Lifeline-only pre-paid wireless carriers may be subject to verification requirements different from other types of carriers.

153. *Certification and verification responsibilities and cost.* Consistent with the Joint Board's *2010 Recommended Decision,* we seek to develop a fuller record on who should be certifying and verifying continued eligibility. In the Federal default states ETCs perform these functions, while in other states, third-party administrators or social services agencies may perform them. Comprehensive data on certification and verification responsibilities and costs would assist the Commission in determining the most appropriate entity to certify and verify Lifeline consumers' eligibility. Specifically, as suggested by the Joint Board, we seek comment on the costs of requiring ETCs, states, or third-parties to undertake certification and verification procedures.

154. Requiring ETCs to verify eligibility by interacting with consumers may present challenges, including consumers' hesitancy to provide personal information to ETCs. We also note that to the extent an ETC is seeking to build a Lifeline customer base, it may not have the same incentives to verify continued eligibility for benefits as would a neutral third party or government agency. Additionally, Federal, state, or Tribal agencies administering qualifying programs may be able to provide more reliable and more accurate information than consumers for verifying program or income eligibility. Therefore, we seek comment on whether ETCs should continue to be responsible for conducting eligibility certification and verification directly with Lifeline consumers, and on how income-based eligibility can be verified if not directly through the consumer. Further, we seek comment on the relative merits of relying upon ETCs, state agencies, Tribal governments, or other third-party entities to conduct initial certification and subsequent verification of eligibility. We seek comparisons of state practices or procedures, including how various practices have impacted the number of ineligible subscribers and duplicates, and other forms of waste, fraud, and abuse.

C. Coordinated Enrollment

155. We agree with the Joint Board's recommendation that coordinated enrollment should be encouraged as a best practice by the states. Coordinated enrollment can provide an important protection against fraud because eligibility is certified by the appropriate state or Tribal agency. We also agree with the Joint Board and many commenters that there are certain administrative, technological, and funding issues associated with coordinated enrollment. We seek comment on whether mandating coordinated enrollment would be appropriate, though we note that the record is not yet well developed on this issue. We seek further information about the costs and benefits of coordinated enrollment. We also seek to understand what if any steps the Commission might take to facilitate coordinated enrollment in all states.

156. *Administrative issues.* We seek to build on the information we have collected from states and Tribal governments that are developing electronic interfaces to administer the Lifeline/Link Up program through coordinated enrollment. In the Joint Board proceeding, a few states provided detailed information regarding their coordinated enrollment best practices. For example, California explained that it moved from an automatic enrollment system to a system that pre-qualifies eligible consumers who must then affirmatively accept the service. Additionally, the GAO Report noted that states in its survey found that using various types of automatic enrollment procedures has a positive impact on reaching and enrolling eligible consumers. We seek comment on ways to ensure that coordinated enrollment provides fair and equivalent access to all providers of Lifeline service in a state, how to provide prompt and accurate notification of customer eligibility to carriers, and whether and how to ensure that a coordinated enrollment program would not prevent eligible consumers from qualifying under the income criteria. We also seek comment on how many and which states and Native Nations would require changes in state or Tribal laws to effectuate coordinated enrollment.

157. *Technological issues.* Individual states or Tribal governments may face unique technological circumstances and burdens that make it impractical or unduly burdensome to implement coordinated enrollment. For example, the ability of a state or Tribal government to implement coordinated enrollment may depend upon the capabilities of existing data processing equipment, software, and data communication networks. We seek comment on these burdens and seek detailed information on the technological hurdles that states or Tribal governments would face, and how these challenges can be overcome. How many states and Tribal governments would need to upgrade or add data processing equipment, software, data networks, or other technology solutions in order to implement coordinated enrollment?

158. *Funding issues.* We are aware that there could be significant costs associated with coordinated enrollment, including the costs of safeguarding consumers' privacy and security, administering the program, and developing and maintaining software and equipment. How have states that have implemented coordinated enrollment funded associated costs? If the Commission were to mandate coordinated enrollment, should states and Tribal governments be required to provide all of the necessary funding, or should the Universal Service Fund bear some of those costs, and if so, what portion? We ask states that have developed or are developing coordinated enrollment programs to provide data on the associated costs. We also seek comment on the overall cost savings, if any, associated with coordinated enrollment, and on any other benefits that arise from coordinated enrollment. For example, have coordinated enrollment procedures helped states or Tribal governments better target benefits to intended beneficiaries? We ask for comment on the extent to which coordinated enrollment might lead to increased participation in the low income program. We seek comment on whether coordinated enrollment would reduce fraud if participants were required to use a coordinated enrollment process in order to obtain benefits. We encourage commenters to quantify, to the extent possible, the magnitude of any administrative costs and potential savings of coordinated enrollment.

D. Database

159. *Administration.* We seek comment on who should administer the program database. Should USAC be the primary administrator of a centralized system, or should the Commission select another third-party to administer the database? Is a governmental agency in a better position to safeguard consumers' highly sensitive information, such as household income, than a third-party? Several commenters note that state social service agencies interact most closely with the program's target population, and may be most competent to deal with low-income households' sensitive documents. What models or best practices are there in other contexts for social service programs?

160. *Functionality.* We have heard from several ETCs that a national database may be the best means to protect against waste, fraud, and abuse. We seek comment on how we can create and implement a database that would enable efficient enrollment by households in the program, but also guard against waste, fraud and abuse. For example, AT&T proposes a national PIN database that would answer two questions: (1) Has a consumer been deemed eligible by the state; and (2) is the consumer already receiving Lifeline discounts? Under AT&T's proposal, states would assume responsibility for determining consumer eligibility and assigning a PIN that would be provided in blocks to various states by USAC. ETCs would access the database and be able to determine and change the status of a consumer.

161. We seek comment on what functions should be served by a centralized database and the priorities for implementation. We are interested in understanding whether there are databases or systems used to facilitate other government-supported programs that can serve as models.

162. First, we seek comment on the functionality that should be included in any information system that facilitates enrollment certification, and ongoing verification of eligibility. For example, how could a system simplify the certification process and provide real-time electronic verification of consumer eligibility? How can we ensure that the database provides ongoing verification of consumer eligibility? In addition, we seek comment on the type of information that the database would need to contain regarding a consumer's current Lifeline enrollment status. How would ETCs access eligibility information? CGM notes that Wisconsin provides real-time certification of customer eligibility at the time of enrollment. Could Wisconsin's system provide a model for a nationwide database?

163. In addition, we seek comment on whether a nationwide database could efficiently and effectively facilitate ongoing verification of customer eligibility. We seek comment on how a database would receive updates on changes in consumers' eligibility from appropriate social service agencies so that eligibility for Lifeline could be monitored in a timely manner. For

example, if a database is linked to a Federal or state system that contains information regarding customer enrollment in a qualifying program and the subscriber becomes ineligible in that qualifying program sometime after enrolling in Lifeline, how would the system notify the ETC that the subscriber is no longer eligible for Lifeline? Would the system alert the ETCs on a periodic basis or every time a subscriber drops out of the qualifying program? We seek comment on the procedures ETCs would follow when a subscriber becomes ineligible. For example, would the subscriber be given a grace period to secure alternative service once de-enrolled in Lifeline? How, if at all, could a database be updated to reflect changes in income eligibility?

164. We also seek comment on whether a national database would resolve the issue of annual verification by providing an effective means of verifying customer eligibility monthly, quarterly, or annually? How could a nationwide database accommodate the differences in state Lifeline practices, which include varying Lifeline eligibility criteria and verification mechanisms? Additionally, we seek comment on the impact a national database would have on carriers' administrative burden.

165. Second, we seek comment on the functionality required to eliminate duplicate claims for support and generally guard against waste, fraud, and abuse. Stakeholders have stated that a national database could eliminate fraudulent and duplicate claims for Lifeline support by performing a pre-qualification address verification. Currently, only Texas has a database that can identify duplicate claims, but the database does not allow ETCs to determine immediately if a household is enrolled in another program. Rather, ETCs must wait to hear from the system administrator whether the potential household is being served by another ETC. Because the Texas database is not updated in real-time, stakeholders report that there is significant lag-time in signing up customers. Is it necessary or desirable to update the database on a real-time basis?

166. Third, we seek comment on how the database would be populated and by whom. Some commenters have pointed out that a national database populated by the states as well as ETCs could simplify the certification process by providing accurate and up-to-date information on eligibility. Other commenters explain that state social service agencies are best situated to provide these inputs. We seek comment on what authority the Commission has to require state social service agencies to provide inputs in the database. We seek comment on who should be charged with populating the database.

167. A national database would need to have the ability to normalize or standardize data into a common format in order to account for variations in consumer- or ETC-provided data fields, especially addresses. What entity or entities would be responsible for populating a national database with the necessary customer eligibility information? Would ETCs populate the database for all customer data, and if that is the responsibility of ETCs, should we impose different deadlines for completion depending on the number of Lifeline subscribers for each ETC. Would a phased implementation schedule be an appropriate way to populate such a national database? If we were to adopt such an approach, what threshold should we establish to determine when different providers are required to participate, and should that be based on the size of the ETC (total subscribers) or the number of low-income subscribers it has?

168. Fourth, we seek comment on the system requirements of a national database. For example, Emerios noted that a database must be flexible enough to allow for consumers to easily switch between providers, and CTIA points out that a database should include enough fields so that if the fund supports other services in the future that the database would remain relevant and useful. We seek comment on these issues as well as other matters implicated by a national database.

169. *Costs and Funding.* We seek comment on the best way to fund and maintain a national database. Should database administration be funded completely or partially from the Universal Service Fund? Alternatively, if fees are assessed on ETCs to fund a national database, should fees be assessed on a per Lifeline-applicant basis, per instance of accessing the database (per "dip" into the database), or both? Emerios estimates that a centralized database would cost approximately $1 per application to administer. CGM and YourTel suggest that ETCs pay $.05–$.10 per dip. How many "dips" would be expected per year? Is there some other ETC assessment mechanism that would be more appropriate, such as a one-time flat fee? Verizon suggests that California's model of funding a third-party administrator using a customer-billed surcharge is an effective strategy. Are there examples of funding for program participation databases in other contexts that could serve as a model?

170. We seek comment on what costs the states might incur if a national database were established. For example, what costs would be associated with set-up, continuous operation, and updating of appropriate state databases that may be used for state low-income programs, as well as establishing appropriate telecommunications and information links and electronic data interfaces (EDIs) with a national database. Additionally, would existing state databases need to be modified in order to be compatible with a national database and at what cost? Could a national database have the inherent capability to perform seamless data protocol conversions while interacting with the state databases? The existing proposals have not addressed how the related non-recurring and recurring costs would be allocated among the individual states, the national/Federal level, and ETCs. However, as Emerios points out, states could be incentivized to connect to an existing national database because of the reduced costs of interfacing with a single database rather than potentially interacting with numerous providers. Thus, even in the absence of a state mandate to interface with a national database, states may find moving towards automation to be fiscally sound. Alternatively, are there Federal agencies with which we could partner to populate consumer eligibility data?

171. *Data Security and Privacy Issues.* We note that the privacy-based limitations on the government's access to customer information in Title II of Electronic Communications Privacy Act (ECPA), section 222 of the Communications Act, and our implementing rules and the privacy provisions of the Cable Act, may be implicated by collection of the data discussed here. We seek comment on whether any of these pre-existing regulatory or statutory requirements would impose any restrictions on the storage by a database administrator of customer eligibility, certification, and verification data. We seek comment on how best to address these concerns. We ask commenters to suggest ways in which a database could comply with any such requirements, and how could it be set up both to get useful data and to minimize the burden on consumers and reporting entities? Are the concerns alleviated if consumers provide information directly to the Commission, or if the ETC obtains consumer consent through a waiver at the time of enrollment? If the latter, what steps could the Commission take to ensure

that consumers have provided consent? How could the Commission address any other privacy issues, and any other legal impediments to the creation and maintenance of such a database? Are there other databases that have been constructed that could serve as a model for developing a database for Lifeline/Link Up? Specifically, we seek input from the states that have developed similar databases on how best to achieve our goal of allowing ETCs to access relevant data while protecting consumers' privacy.

172. We note that different states have different laws governing privacy of consumer data. We seek comment to better understand the differences in state privacy and security laws concerning the program eligibility data. We also seek comment to explore how to construct an IT platform that could ensure data security while enabling convenient access for all Lifeline providers across the country. Emerios points out that having a single platform, populated by ETCs, which all states can access, decreases the risk of security breaches by reducing the number of portals for inputting sensitive information. Would a national database be a more effective way to ensure consumer privacy than requiring individual ETCs to gather documentation establishing household eligibility?

173. *State/Regional Database.* We also seek comment regarding the feasibility and potential advantages and disadvantages of regional and state databases as opposed to, or in addition to, a national database. We seek comment on several key factors that parallel the critical issues outlined above for a national database, such as administration, cost and funding, privacy, and data security issues. We are interested in the advantages and disadvantages of these possible models. Consistent with the goal of preventing waste, fraud, and abuse, where a state has taken steps to automate the process to streamline or enhance eligibility and certification procedures and/or to prevent duplicate claims, we propose to require all ETCs operating in that state to utilize that state-managed process. We seek comment on this proposal.

E. Electronic Signature

174. Section 54.409(d) requires carriers to "obtain [a] consumer's signature on a document certifying under penalty of perjury" that the consumer meets certain Lifeline eligibility requirements. Section 54.410 requires carriers to verify continued eligibility by surveying consumers who must prove their continued eligibility and "self-certify under penalty of perjury" to certain requirements relevant to continued eligibility. Virgin Mobile has requested to enroll Lifeline consumers online by allowing applicants to electronically sign the application and to enroll customers by telephone using an Interactive Voice Response (IVR) system, which records and saves by phone an applicant's certification of eligibility.

175. The Electronic Signatures in Global and National Commerce Act (E–Sign Act) and Government Paperwork Elimination Act make clear that electronic signatures have the same legal effect as written signatures. We propose to allow consumers to electronically sign the "penalty of perjury" requirements of sections 54.409(d) and 54.410 of the Commission's rules. Because there is no general Commission rule on use of electronic signatures, we seek comment on the rules defining and guidelines for accepting electronic signatures for Lifeline enrollment, certification, and verification. For example, should sections 54.409(d) and 54.410 be amended to make clear that electronic signature is an acceptable "signature on a document" as required by the rules? We seek comment on how we can ensure that ETCs maintain copies of the household certifications in the event of duplicates or other questions concerning compliance with our rules.

176. We seek comment on whether an IVR telephone system is an acceptable method to verify a consumer's signature under sections 54.409(d) and 54.410 of the Commission's rules. Unlike section 54.410, section 54.409(d) specifically requires a signature by an eligible consumer, and we seek comment on whether an interactive voice response (IVR) telephone system satisfies the signature requirement of the rules. We note that the Commission has allowed the use of automated processes in other instances requiring verification by adopting rules specifically authorizing the use of such automated processes. How would ETCs satisfy the recordkeeping requirements of section 54.417 using an IVR telephone system?

VII. Consumer Outreach & Marketing

177. Section 214(e)(1)(B) of the Act requires ETCs to advertise the availability of services supported by universal service funds "using media of general distribution." Over the years, the Commission has highlighted the importance of outreach to low-income consumers, including by adopting outreach guidelines in its *2004 Lifeline and Link Up Order,* 69 FR 34590, June 22, 2004.

178. Advertising the availability of discounted services available to low-income households falls into two related categories: Outreach and marketing. Outreach entails increasing public awareness of the program, while marketing relates to how ETCs describe and sell their USF-supported products to consumers. The Commission wants to ensure that eligible consumers are made aware of the availability of Lifeline and Link Up and seeks comment below on effective outreach methods to low-income households. Moreover, as discussed below, some ETCs are energetically marketing Lifeline- and Link Up-supported products. We seek comment on whether we should impose marketing guidelines on ETCs to ensure that consumers fully understand the benefit being offered, which may help prevent the problem of duplicate support.

179. In its *2010 Recommended Decision,* the Joint Board looked at both outreach and marketing and urged the Commission to adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund. In support, the Joint Board cited USAC data showing that, in 2009, only 36 percent of eligible consumers participated in Lifeline. Based on this statistic, the Joint Board expressed concern that current outreach is ineffective or that some ETCs are neglecting low-income outreach altogether. The Joint Board also recommended that the Commission review carrier best practices on community-based outreach; clarify the role of the states in performing low-income outreach, including working with ETCs to formulate methods to reach households that do not currently have telephone and/or broadband service; and monitor ETCs' outreach efforts. With respect to marketing, the Joint Board encouraged the Commission to provide ETCs with the flexibility to market their service offerings to eligible consumers in accordance with their respective business models, and recommended that the Commission seek comment on whether ETCs should be required to submit a marketing plan to the state or Commission describing outreach efforts.

180. *Outreach to Households Without Telephone Service.* In 2004, the Commission adopted an outreach guideline recommended by the Joint Board that states and carriers utilize materials and methods designed to reach low-income households that do not currently have telephone service. In its *2010 Recommended Decision,* the Joint Board recommended that states should assist ETCs in two primary ways

in formulating methods to reach households that do not currently have telephone and/or broadband service. First, states can identify appropriate community institutions to participate in public-private partnerships. Second, states can assist ETC outreach efforts by identifying unserved and underserved populations for whom outreach would be beneficial.

181. We seek comment on the efficacy of current efforts by states and ETCs to reach low-income consumers without phone service, and what more can be done to improve outreach, particularly in states where adoption of phone service is below the national average. We seek examples of public-private partnerships that have been effective in reaching low-income households without phone service. In addition, we would like to better understand how state social service agencies or public utility commissions identify unserved populations in their states, and whether and how they could share such information with ETCs operating within their states. We also seek comment on the role of Tribal governments and organizations in identifying and reaching out to members of their communities who lack telephone service and could benefit from Lifeline and Link Up. Moreover, we are interested in any data regarding whether outreach to low-income households results in increased telephone penetration rates.

182. *Outreach to Non-English Speaking Populations.* The Commission has encouraged states and carriers to use advertising that can be read or accessed by any sizable non-English speaking populations within the ETC's service area. The Joint Board also emphasized the importance of outreach to non-English speaking communities in its *2010 Recommended Decision.* We seek comment on whether current outreach efforts to non-English speaking communities by states and ETCs are effective, or whether more should be done in this area. As discussed in more detail below, we seek information on community-based partnerships or initiatives that have been effective in educating non-English speaking populations about the Lifeline/Link Up program.

183. *Role of the States and Outreach with Government Assistance Programs.* Since 2004, the Commission has urged states and carriers to coordinate their outreach efforts with governmental agencies that administer any of the relevant government assistance programs. The Commission's 2004 outreach guidelines make clear that states play an important role in working with ETCs to advertise the availability of Lifeline supported services. Recently, the National Broadband Plan noted that requiring ETCs to conduct Lifeline outreach may not be the most effective way to reach underserved, low-income populations. Rather, the Broadband Plan suggested that state social service agencies should take a more active role in consumer outreach by making Lifeline and Link-Up applications routinely available when the agencies discuss other assistance programs with consumers. A few ETCs have pointed out that social service agencies are in a much better position than ETCs to approach potential consumers with information about Lifeline-assisted programs.

184. We seek comment on what steps this Commission could take to encourage state and Tribal social service agencies to take a more active role in reaching potential Lifeline-eligible consumers going forward. For example, should we encourage the states to distribute to low income consumers comparative guides detailing the competitive Lifeline offerings available in their states? We seek comment on who should bear the cost associated with state outreach efforts, and whether outreach costs should come out of the Universal Service Fund. And we ask commenters to identify any best practices in the area of state outreach. We also inquire whether coordinating outreach with government assistance programs should be the preferred method of outreach, as opposed to imposing mandatory outreach requirements on ETCs.

185. *Outreach by ETCs.* As noted above, the Commission has not imposed mandatory outreach obligations on ETCs, but rather adopted outreach guidelines in 2004 designed to encourage states and carriers to work together to educate consumers about Lifeline-assisted programs. The Joint Board's *2010 Recommended Decision* recommended that the Commission adopt mandatory outreach requirements for all ETCs that receive low-income support from the Universal Service Fund. Looking at the current Lifeline participation rate, the Joint Board expressed concern that ETCs may not be doing enough to promote their Lifeline offerings to low-income households. The Joint Board also recommended that the Commission seek comment on whether ETCs should be required to submit a marketing plan to the state or Commission outlining their outreach efforts.

186. We seek comment on whether we should impose specific outreach requirements on ETCs, as recommended by the Joint Board. If the Commission were to adopt mandatory requirements, what should those requirements be? Would a uniform national rule be effective in achieving program goals, and what burdens would such a rule place on ETCs? In response to the Recommended Decision, Qwest argues that ETC advertisements do not necessarily result in more customers enrolling in the program, and that the better approach is for the state or social services agencies to promote the program. TracFone notes that it spent $41 million on advertising in 2010 to promote its Lifeline-supported SafeLink product, which included targeted marketing and advertisements in community newspapers. We seek to develop a fuller record on this issue, as suggested by the Joint Board. We are interested in understanding what are the most effective outreach methods to reach consumers, and how the Commission could evaluate the impact of outreach methods over time.

187. *Community-Based Outreach.* In its *2010 Recommended Decision,* the Joint Board noted that community-based outreach may be an effective means to reach low-income households and encouraged the Commission to collect data on best practices in this area. We ask ETCs, community-based organizations, and other interested parties to highlight community-based outreach that has been successful in educating low-income households about the Lifeline program. For example, we seek comment on the role of Tribal governments and other Tribal organizations in reaching low-income households on Tribal lands.

188. *Marketing and Uniform Language to Describe Lifeline.* Some ETCs market their Lifeline-supported products under a trade name. For example, TracFone offers Lifeline-supported service under the name SAFELINK WIRELESS®, while Virgin Mobile's competing offering is Assurance Wireless. Some eligible consumers may not understand that these products are Lifeline-supported offerings, and therefore may not realize they are violating our prohibition against having more than one Lifeline-supported service per household. To prevent consumer confusion and reduce the number of consumers receiving duplicate support, we seek comment on whether we should require all ETCs to include language in the name of their service offering or in description of the service to make clear that the offering is supported by Lifeline. Should ETCs be required to expressly identify the service as a Lifeline-supported product in all advertising and outreach to

consumers? Would it inhibit effective marketing by ETCs to require such language on the product name, potentially reducing competition for Lifeline-supported services? We seek comment on whether the other actions we propose in this NPRM to eliminate waste, fraud, and abuse alleviate the need to set policies related to the marketing of Lifeline services to consumers.

189. We also seek comment on whether ETCs should be required to include in all marketing and advertising materials for Lifeline-supported offerings clear and prominent language explaining that consumers are entitled to only one Lifeline subsidy per household. Should the Commission develop model language that would be required for ETCs to use, or that would be a safe harbor for ETCs to use? If so, what should that language be? We request that ETCs provide us with the language they currently use to describe their Lifeline and Link Up service offerings.

VIII. Modernizing the Low Income Program To Align With Changes in Technology and Market Dynamics

A. The Current Lifeline Program

1. Voice Services Eligible for Discounts

190. In light of the marketplace changes noted above, it is also an appropriate time to evaluate the definition of "Lifeline" to ensure it is keeping pace with the basic connectivity needs of low-income consumers. We question whether Lifeline should continue to be defined as "basic local service." As noted above, distinctions between local and long distance calling are becoming irrelevant in light of flat rate service offerings that do not distinguish between local and toll calls. Is the "local" qualifier outdated in light of marketplace changes? How should we define "basic" voice telephony for purposes of the Lifeline and Link Up programs?

191. We propose, consistent with the *USF/ICC Transformation NPRM,* 76 FR 11632, March 2, 2011, to amend the definition of "Lifeline" in section 54.401 to provide support for a set of defined functionalities known as "voice telephony service." This amended definition may provide simplicity for ETCs who provide and advertise Lifeline services, and will ensure consistency across universal service support mechanisms.

192. We seek comment on this proposal. Should this definition of voice telephony service encompass the nine functionalities currently specified in section 54.401? Is there any reason to modify the functionalities to be provided to ensure quality service for low-income customers? As noted by the Commission in the *USF/ICC Transformation NPRM,* with respect to the performance characteristics for voice telephony service, "voice grade access" to the public switched network is defined in section 54.101 of the Commission's rules as "a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz." Is this definition appropriate for Lifeline households? How should we define services supported by Lifeline in a way that is technologically neutral and can evolve over time as technologies used to deliver voice service change in the years ahead?

2. Support Amounts for Voice Service

193. We seek comment on whether there is a more appropriate reimbursement framework than the current four-tier system for determining Federal support amounts for the program that will provide support for low-income households that is sufficient, but not excessive, consistent with section 254. Should the low-income tiers of support be modified in light of the marketplace changes that have occurred since the *Universal Service First Report and Order,* 62 FR 32862, June 17, 1997? Such a change could be an important step toward reducing waste in the Lifeline program. How can the Commission ensure that low-income households can continue to benefit from the expanded array of service offerings, including pre-paid wireless service, while ensuring that universal service funds are primarily benefiting consumers, rather than the carriers that serve those consumers?

194. Given the growth of the program in recent years, it is vital that the Commission ensure that funds are distributed in a targeted and meaningful way. In particular, we seek comment on whether it makes sense to continue to tie Lifeline support amounts to the Federal subscriber line charge, which may not be the appropriate metric of whether service is affordable to a low-income household. Should we adopt a different framework for carriers that do not charge a subscriber line charge, or that do not allocate their costs between the intrastate and interstate jurisdictions? Is there an amount that would better ensure affordable service for eligible households? What might be the appropriate reimbursement structure be in the future, when voice service is provided as an application over broadband networks, potentially at no additional cost to the consumers?

195. We also seek comment on whether to maintain Tiers 2 and 3 of Lifeline support as currently set forth in the Commission's rules. Should consumers be entitled to a higher or lower baseline Federal support amount, justifying a change in the amount of available Tier 2 support? Similarly, should the Commission raise or lower the amount of Federal matching support that is available under Tier 3? Finally, does $25 remain a reasonable additional reimbursement rate for consumers receiving enhanced Tribal support pursuant to Tier 4? Does providing such a flat amount effectively create a price floor for carriers serving Tribal lands, even though it may be possible in some instances to serve eligible households at a lower cost (*i.e.,* for less than $25 per month)? We emphasize that in asking this question we are not seeking to limit benefits for low-income households, but rather looking at ways to restructure support levels to create incentives for carrier efficiency.

196. If the Commission were to create a new reimbursement structure for carriers providing Lifeline service to low-income households, should the reimbursement mechanism be different for wireless and wireline ETCs, based on their potentially divergent costs for providing service? Would there be any reason to adopt a different framework for pre-paid wireless providers as opposed to post-paid? Should the Commission maintain a tiered reimbursement structure? If so, what costs should be used as the basis for setting a support amount? Would adoption of a single, uniform flat discount amount without tiers be appropriate? Would a percentage discount rate, subject to an overall dollar cap, better assist low-income households in securing the best retail rates offered by their chosen ETC? In the alternative, should we establish national parameters of a basic Lifeline service, and require ETCs to specify the minimum price per household they would accept to provide such service? We seek comment on these alternatives.

3. Minimum Service Requirements for Voice Service

197. We seek comment on the advantages and disadvantages of adopting minimum standards for all ETCs offering Lifeline service. In the section above, we asked whether we

should establish national parameters for a basic Lifeline service. Accordingly, if we were to adopt minimum service requirements for Lifeline-only ETCs, what should those requirements be? Should we establish a set minimum number of monthly minutes to be included in ETCs' Lifeline service offerings, and if so, what would be an appropriate number of minutes? Should we establish a minimum number of free long-distance calls? Is there a need for service quality standards when consumers often have the choice of several Lifeline providers? We seek comment on whether the Commission should impose minimum service requirements on all ETCs, as opposed to just wireless ETCs, and how we could impose standards that are technologically neutral. We note that wireless providers offer the benefits of mobility and often additional features and functionality, such as voicemail, caller ID, and call waiting, at no extra charge. Similarly, low-income households that select Lifeline offerings from wireless providers may have the ability to call distant family members and friends without incurring toll charges. Can uniform minimum standards be developed for all technologies, or is there a benefit to having standards tailored to different technologies? What are the relevant attributes or features that should be standardized across Lifeline offerings?

198. We also seek comment on the relevant costs and benefits associated with setting minimum standards of service. We note that minimum standards of service could increase the costs of Lifeline service to ETCs and could thus provide a disincentive for additional carriers to seek ETC status for the program. Would minimum standards deter companies from seeking ETC designation? Would high minimum standards make Lifeline offerings more attractive to low-income households, and thereby increase demand for the program?

4. Support for Bundled Services

199. We seek comment on amending the Commission's rules to adopt a uniform Federal requirement that Lifeline and Link Up discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packages combining voice and broadband, or packages containing optional calling features. We note that section 254(f) of the Act bars states from adopting regulations that are inconsistent with the rules established by the Commission to preserve and advance universal service.

200. In a number of states where ETCs are not precluded by state requirements from allowing consumers to apply their Lifeline discounts to the purchase of bundled packages or optional services, many carriers—including large carriers like Sprint Nextel, Verizon Wireless, and AT&T Mobility—limit Lifeline offerings to basic voice service. We seek comment on whether to adopt a national rule that would require all ETCs to offer Lifeline and Link Up discounts on all of their service plans with a voice component. Under such a rule, ETCs could be required to apply Federal Lifeline support to reduce the cost of any calling plan or package selected by an eligible low-income household that allows local calling, rather than offering a discount only on the carrier's lowest tariffed or otherwise generally available residential rate plan. However, each eligible household's Lifeline discount would be capped at the amount the subscriber would have received if it had selected a basic voice plan. Additionally, we seek comment on requiring all ETCs to permit eligible households to apply the Link Up discount amounts set forth in section 54.411(a) of the Commission's rules to any service plan with a voice component. As with the Lifeline program, each eligible household's Link Up discount could be capped at the amount the household would have received pursuant to the Commission's rules if it had selected a basic voice plan.

201. We seek comment on whether amending our rules in this way would further the statutory principle that consumers have access to quality services at "just, reasonable, and affordable rates." Restrictions on use of Lifeline discounts, whether imposed under state law or by an ETC, may preclude a significant number of eligible low-income households from the expanded service options available in the marketplace, such as packages that include broadband or data service. Further, as compared to carriers' basic plans, bundled packages of services may offer better value for Lifeline and Link Up consumers.

202. We seek to develop a fuller record on current ETC practices regarding the provision of Lifeline discounts on bundled offerings. To what extent do ETCs currently offer Lifeline and/or Link Up discounts on plans that include bundles of services or optional calling features? If so, what services are Lifeline and Link Up consumers permitted to purchase? We also seek comment on the extent to which specific states mandate that ETCs allow the application of Lifeline and/or Link Up discounts to expanded service plans. Is there any evidence that Lifeline and Link Up participation rates have been positively affected by policies requiring the extension of program discounts to the purchase of bundled packages and optional services? Where available, commenters are encouraged to submit supporting documentation of ETC or state practices along with any written submissions.

203. We seek comment on the potential administrative and practical consequences of amending our rules in this fashion. What changes to internal back office systems (*e.g.,* for ordering service and billing) would be required to implement such a rule, and what costs would that impose on ETCs? How long would it take to implement such a change? If we were to adopt such a rule, should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages? Conversely, are there certain service plans or packages that ETCs should not be required to make available to consumers seeking to apply Lifeline discounts? Should consumers be prohibited from applying a Lifeline discount to bundled offerings that contain a video component?

204. Would allowing consumers to choose from an array of expanded packages create a greater likelihood that Lifeline and Link Up consumers may be unable to pay for the remaining portion of their chosen calling plan and therefore risk termination of voice service? What are the options for reducing that risk? If we were to adopt such a rule, one option would be to require ETCs to offer methods of managing usage (whether minutes of use or data) that otherwise would yield higher monthly charges beyond the monthly fee. For instance, Lifeline consumers could elect to set maximum usage amounts for themselves that may not be exceeded per billing cycle. We seek comment on the feasibility of this proposal. What capabilities exist today, or are anticipated in the near term, for carriers to assist Lifeline consumers in managing their service usage? What would be the administrative burdens and costs for a carrier if it were required to offer this to Lifeline subscribers?

205. We seek comment on how we can identify and measure the potential benefits of this proposal. As residential broadband usage becomes more common, many companies have begun offering consumers the option to purchase broadband as part of a "bundled package" that provides a combination of voice, data, and video services to the customer, delivered over a shared infrastructure. As noted above,

compared to carriers' basic plans, bundled packages of services may offer better value for consumers. Would this proposal, if adopted, be likely to make broadband more affordable for low-income households and stimulate broadband adoption by low-income households?

206. We also seek comment on how we can identify and measure the potential costs of this proposal. For example, would this proposed rule change be likely to have an impact on the size of the universal service fund? What are the potential costs to carriers (*e.g.,* administrative costs) in complying with the proposed rule? Finally, are there any potential costs to consumers associated with the proposed rule? To the extent that it is available, commenters are encouraged to submit supporting data along with any written submissions.

B. The Transition to Broadband

1. Support for Broadband

207. The Commission seeks comment on revising the definition of "Lifeline" to ensure it is keeping pace with the needs of low-income households, consistent with the statutory principle that "consumers in all regions of the country, including low-income consumers * * * should have access to telecommunications and information services." Lifeline/Link Up does not currently support broadband. We seek comment on whether the Commission should amend the definition of Lifeline to explicitly allow support for broadband.

208. As noted above, the Commission has sought comment in the *USF/ICC Transformation NPRM* on whether to make broadband a supported service and has sought comment on extending universal service support to broadband. If the Commission does not make broadband a supported service, what would be the legal basis for our authority to support broadband in the Lifeline and Link Up program? If the Commission makes broadband a supported service, what are the associated practical and operational challenges that we would need to address when expanding Lifeline support to broadband? For example, how should a broadband Lifeline service be defined and measured? Should Lifeline support be available on services that do not meet whatever speed threshold the Commission ultimately adopts for purposes of setting infrastructure deployment requirements under the Connect America Fund? For instance, some parties have suggested that for purposes of Lifeline, consumers should be free to choose to use discounts on services that provide 768 kbps or 1.5 Mbps downstream, rather than being forced to use the discount only on higher-speed offerings. Should there be any minimum performance requirements for Lifeline broadband offerings?

209. What would be the appropriate framework for determining support levels for broadband services, given that the price of the retail service is not regulated at either the Federal or state level? We are mindful of the need to ensure that contributions to our universal service support mechanisms do not jeopardize our ability to promote quality services at affordable rates for all consumers. How should we balance these competing goals as we consider modernizing Lifeline and Linkup to support broadband?

210. If broadband is made a supported service, should we impose any terms and conditions on the Lifeline support that is available for broadband? For example, should there be any limitations on the types of services that are offered as part of a Lifeline plan? We sought comment above on whether low-income households should be able to use their Lifeline discounts on any plan with a voice component; should ETCs similarly be required to offer Lifeline discounts on all broadband plans, or just some? We note that several wireless ETCs currently offer text messaging services as part of their Lifeline calling plans. Should consumers be permitted to select "data only" Lifeline plans? Is there a risk that low-income households might incur excessive charges for data plans, absent some form of data or usage cap? We note that some Lifeline consumers already subscribe to broadband services. We ask that ETCs provide any data they may have regarding broadband subscribership among current Lifeline recipients. We also recognize that our analysis of these questions may depend, in part, on what we learn from the broadband pilots described below.

2. Broadband Pilot

211. We propose to set aside a discrete amount of universal service funds reclaimed from eliminating inefficiencies and/or waste, fraud, and abuse to create a pilot program to evaluate whether and how Lifeline/LinkUp can effectively support broadband adoption by low-income households. A broadband pilot program could help us gather comprehensive and statistically significant data about the effectiveness of different approaches in making broadband more affordable for low-income Americans and providing support that is sufficient but not excessive. This data could assist the Commission in considering the costs and benefits of various approaches prior to using Lifeline to support broadband on a permanent basis. We recognize that the ultimate success of using Lifeline funds to support broadband may hinge on the sufficiency and effectiveness of preliminary testing conducted through a pilot program. As identified by the GAO, the Commission has recognized the importance of developing an assessment of the telecommunications needs of low-income households to inform the design and implementation of broadband pilot programs.

212. *Scope of the Pilot Program.* We propose using the pilot program to fund a series of projects that would test different approaches to providing support for broadband to low-income consumers across different geographic areas. The projects could also try to take into account unique barriers faced by certain groups of low-income non-adopters such as Tribal communities or Americans for whom English may be a second language. While individual projects might involve only one type of provider or technology, the overall objective would be to design a pilot program that would be competitively and technologically neutral.

213. We propose structuring the pilot program as a joint effort among the Commission, one or more broadband providers, and/or one or more non-profit institutions or independent researchers with experience in program design and evaluation. The pilot also could include participation from other stakeholders such as private foundations; non-profits experienced in outreach and digital literacy training; desktop computer, laptop, or mobile device manufactures or retailers; and state social service or economic development agencies. We seek comment on these proposals to structure the pilot program as a joint effort among a variety of stakeholders focused on conducting a series of projects to test different approaches to providing support. We expect that the projects would test several variations on program design, including experimenting with different techniques to combine discounts on service and/or hardware with efforts to address other barriers to broadband adoption such as digital literacy.

214. Consistent with our historic role in providing support for services and not equipment, we seek comment on funding projects that would test variations in the monthly discount for broadband services, including variations on the discount amount, the duration of

the discount (limited or unlimited, phased-down over time or constant), and the treatment of bundled services. We also propose to test variations in Linkup-like discounts to reduce or eliminate installation fees, activation fees, or similar upfront charges associated with the initiation of service. We seek comment on these proposals.

215. We propose to require at least some pilot participants to either offer hardware directly or partner with other entities to provide the necessary devices as a condition of participating in the pilot program. The cost of customer equipment necessary to access the Internet (including computers or other devices) has been shown to be a major barrier to adoption, particularly for low-income households. Some stakeholders have suggested that the cost of Internet-enabled devices poses a significant burden on an ETC's ability to provide affordable broadband to low-income consumers. It would be valuable for pilot projects to test variations in discounts to reduce the cost of hardware, including discounts for air cards or modems. Because we intend to evaluate the impact of ETCs' providing different types of discounts on hardware versus not providing any discount, some consumers would not be offered discounted hardware. If we require some applicants for pilot program funding to offer discounted hardware, should all applicants be required to agree to do so even though we do not expect all consumers to receive discounts? We seek comment on these proposals.

216. We propose that applicants for pilot program funding should be prepared to experiment with different approaches to overcoming digital literacy barriers, other non-cost barriers to adoption, and variations in other program design elements that may help the Commission implement a permanent support mechanism. The National Broadband Plan and subsequent research identified the lack of digital literacy among low-income Americans as a major barrier to broadband adoption. Skills such as being able to use a computer or other Internet-enabled device to retrieve and interpret information or to communicate and collaborate with other users, and even such fundamental steps as navigating a Web site and creating a username and password, may pose significant difficulties for many consumers. Any program seeking to effectively increase adoption of broadband may need to address this barrier. We specifically seek comment on what subset of the following additional program design elements should be tested:

- Training methods;
- Outreach methods;
- Contract terms;
- Product offerings/service restrictions or requirements (such as establishing minimum or maximum speed offerings for consumers participating in the pilot); and/or
- Administration/enrollment methods such as automated enrollment through low-income housing facilities or other social service entities.

We also seek comment on how the Commission should take into account elements beyond its control, such as programs or services provided by the private sector, other governmental agencies, or non-profits in conjunction with support provided as part of a broadband Lifeline and Link Up program.

217. We intend for the pilot program as a whole to test the impact of these varying factors; we are not suggesting that each project funded through the pilot test every variable of interest to the Commission. We seek comment on this proposal. We also ask commenters to consider how many settings of key variables should be tested for each program design element (*e.g.* discount amount, duration of the discount). How many households should participate to test each element and variation in a way suitable for generalizing to a large scale program? Should all elements be tested simultaneously, or should they be sequenced in some manner?

218. We note that the goal of the pilot program is to conduct experiments to collect information that would help inform future policy decisions. The pilot is not intended to have an immediate impact on low-income consumers on a large-scale. Similarly, the structure and rules governing pilot projects may differ in important ways from rules that the Commission may ultimately adopt to expand Lifeline to support broadband.

219. *Pilot Program Funding.* We seek comment on how much money should be allocated to support discounts on broadband and administrative costs associated with the pilot projects. Because the goal of the pilot program is to conduct test projects that would produce meaningful data by experimenting with different program design elements, we believe that only a relatively small sample size is needed to develop statistically valid results. Depending on the parameters assessed by different pilot programs, the program may be able to gather statistically valid data from a smaller number of participating households.

220. Consistent with our over-arching objective of ensuring fiscal responsibility, we propose to fund the pilot projects by utilizing at least some of the savings from the proposal to eliminate reimbursement for Toll Limitation Services, as well as some of the savings realized by eliminating waste, fraud, and abuse from the program. USAC's most recent projections forecast total annual 2011 TLS support of approximately $23 million. Are there other funding sources available that we should consider in implementing these pilot programs? Should we require entities applying for pilot program funding to contribute some sort of matching funds or in-kind contribution?

221. *Duration of Pilot Program.* Commenters have recommended pilot programs ranging from six months to multiple years. USTelecom suggested, for instance, that a period of 18 to 24 months would be needed to produce "meaningful data that would permit the Commission to thoughtfully design a permanent program." We seek comment on the appropriate duration of a pilot program. Commenters who suggest schedules should explain the relative advantages and disadvantages of specific lengths of time.

222. At the Commission's broadband pilot roundtable, several parties suggested that it might be appropriate to provide subsidies only for a limited period of time to address the initial adoption hurdle of realizing the benefit of broadband. If some of the variables tested include variations on the length of time that a subsidy is available or a reduction in the amount of subsidy over time, for how long would researchers need to follow subscribers after the reduction to test whether adoption outcomes stay the same, or whether consumers drop service when the subsidy is eliminated or reduced?

223. *Role of the States.* We seek comment on the role that states should play in any pilot program integrating broadband service into the low-income program. For instance, could states assist in identifying target populations or assist in administration? Are there services or funding support that states are uniquely situated to provide in a broadband pilot program? How should low-income universal service support for broadband be integrated into other Federal, state, regional, private, or non-profit programs that help address barriers to broadband adoption?

224. *Consumer Eligibility To Participate in Pilot Projects.* We propose using the Lifeline eligibility rules currently in effect in Federal default states as a uniform set of consumer

eligibility requirements to be used in all pilot projects. We believe uniform eligibility rules will lower administrative costs associated with the pilots and help the Commission more easily compare results from different pilot projects. Is there any reason to allow some pilot projects to deviate from the Federal default rules? For example, should the Commission consider funding a pilot project that tested the impact of more stringent or more lenient eligibility requirements to help assess the potential impact such requirements might have? Alternatively, are there reasons that the Commission should consider pilot projects that limit eligibility to a more narrowly defined group of households currently eligible under the Federal default rules, such as households with children participating in the National School Lunch Program?

225. *Eligibility To Apply for Funding for Proposed Pilot Projects.* We seek comment on whether funding for the pilot program should be limited to ETCs or whether non-ETCs could be eligible to receive funding during the pilot. Several commenters have suggested eligibility for funding for broadband pilots, or any broadband Lifeline support, should be independent from the traditional ETC requirements established under section 214 of the Act. Could we forbear from our current ETC requirements to allow non-ETCs (*e.g,* broadband providers who are not ETCs or non-providers) to participate in the pilot? Forbearance from our ETC requirements may encourage participation by a greater number of broadband providers. What are the advantages and disadvantages of having a larger number of providers seek funding for pilot projects?

226. We propose to allow non-ETCs (*e.g.,* non-providers) to submit applications for pilot funding provided they have identified ETCs, which would receive the support disbursements, as partners. We believe allowing non-ETCs to apply for funding may increase participation by allowing ETCs to rely on other entities to help with pilot program administration. This approach may also encourage more multi-stakeholder partnerships designed to simultaneously address multiple barriers to adoption. We seek comment on this proposal.

227. We also seek comment on limiting program participation to ETCs that partner with entities approved by the NTIA's State Broadband Data & Development (SBDD) Program. The SBDD program, led by state entities or non-profit organizations working at their direction, facilitates the integration of broadband and information technology into state and local economies. The program awarded a total of $293 million to 56 grantees or their designees and the grantees use this funding to support the use of broadband technology. Among other objectives, these state-created projects use the grants to research and investigate barriers to broadband adoption and created state and local task forces to expand broadband access and adoption. ETCs could work with the SBDD grantees and other stakeholders to develop pilot projects that integrate Federal universal service support into a state's existing or planned adoption efforts. The potential benefits of encouraging ETCs to partner with these SBDD grantees to participate in this pilot program are numerous: Each of the grantees was selected by a state government that may be well positioned to develop targeted, state-specific adoption approaches; many of the grantees have experience with training, outreach, and surmounting barriers to adoption; and such a pilot could leverage the work already conducted by NTIA, such as the due diligence it performed on the grantees and ongoing program oversight over those grantees. We seek comment on limiting eligibility in the pilot program only to ETCs that are partnering with SBDD grantees. Is there another group of Federal or state program grantees that we should consider including in the pilot?

228. *Proposals.* We propose to require entities interested in applying for pilot program funding to submit specific information about the proposed project, such as applicant information, including any and all private or corporate partners or investors; a detailed description of the program, including length of operation; product offerings and service restrictions; discount or discounts provided, the duration of the discounts; treatment of bundled services; whether discounts would reduce or eliminate installation fees, activation fees, or other upfront costs; how to address (if at all) the cost of hardware, including aircards, modems, laptops, desktops, or other mobile devices; training and outreach; testing; identification of costs associated with implementing the program, including equipment and training costs; how the project complies with relevant program rules, adequately protects against waste, fraud, and abuse, and achieves the goals of the program discussed above. We also propose to require applicants to provide a brief description of how their program would help inform the Commission's future decision-making related to providing low-income support to broadband on a nationwide basis. We seek comment on this process for submission of pilot proposals.

229. *Pilot Evaluation.* We seek comment on how to evaluate the results of pilot projects and what reporting requirements should be adopted for pilot participants. How could the Commission evaluate whether approaches tested during the pilot program further the proposed goal of providing affordable broadband service? Should one goal of the pilot be to test the impact of the project's approach on increasing adoption? For instance, should we assess the total number of new adopters; new adopters as a percentage of eligible program participants; the number of program participants as a percentage of eligible participants; average percentage of participants' discretionary income spent on discounted broadband service through the pilot relative to the national average percentage of household discretionary income spent on broadband? How could we evaluate the relative impact of the service discount compared to other potential factors that may be tested, such as the provision of training or equipment? We propose that the Commission also seek to develop information about the cost per participant and cost per new adopter through the pilot program. This information could assist the Commission in assessing the costs and benefits of particular approaches to whether broadband should be supported, and if so, how. We seek comment on this proposal and whether there are other types of data that the Commission should review to evaluate whether a given approach would provide support that is sufficient but not excessive.

230. We seek comment on other types of information the Commission should consider when assessing projects funded through the pilot program. For instance, how best can the Commission evaluate program administration costs and the feasibility of expanding any given test project to a national scale?

231. *Delegation of Authority.* We propose to delegate authority to the Wireline Competition Bureau to select pilot participants and take other necessary steps to implement the proposed program. We seek comment on this proposal.

232. *Previously Submitted Proposals.* A number of entities have developed and submitted ideas for different types of broadband low-income pilots. For instance, US Telecom explains that an efficient broadband pilot program design should include three

components: research; program design and implementation; and evaluation. Nexus Communications proposes that a broadband pilot be conducted in four different cities using "smart phones" that would enable the Commission to obtain real-word data with regard to community response to four different pricing and service arrangements. One Economy proposes two distinct pilot programs, one involving a 4G public private partnership and another one involving a reverse auction design.

233. We seek comment on these proposals. We ask commenters to identify how these proposals could be improved or altered and to explain how any measures that they suggest are consistent with our proposed goals of ensuring just, reasonable, and affordable service and providing support that is sufficient but not excessive.

234. Finally, as discussed above, a number of other broadband adoption programs are currently underway, and other stakeholders have suggested that they may conduct their own projects on these issues. We are interested in learning more about the status of these projects and what data we can gather from those efforts. Is there information or data that the Commission is uniquely positioned to gather? What data can the Commission rely on outside sources to collect, and how could it design pilots to complement any private sector research efforts? Can the Commission gather sufficient information from existing adoption programs to inform its policies sufficiently to implement a long-term low-income support for broadband program without launching Lifeline and Link Up pilots? We welcome information from industry, academic institutions, governmental agencies, and other stakeholders that could assist in our evaluation of strategies to extend Lifeline to broadband.

C. Eligible Telecommunications Carrier Requirements

235. We seek comment on whether the Commission should forbear from applying the Act's facilities requirement to all carriers that seek limited ETC designation to participate in the Lifeline program. Should every wireless reseller be eligible to become an ETC so long as it fulfills the conditions we have previously imposed as conditions of forbearance? If so, should the Commission adopt rules codifying the conditions rather than imposing them on a case-by-case basis?

236. Some of those conditions previously imposed on resellers may have some benefit even if applied to facilities-based carriers that participate in the Lifeline program, such as the condition that carriers directly deal with their customers (rather than use a third-party intermediary, like a retailer). Should the Commission adopt any of these conditions as rules that would apply to all ETCs that participate in the Lifeline program? Other conditions—such as the requirement to provide appropriate access to 911 and E911—may be applicable to facilities-based carriers that use their own facilities only in part. Should the Commission adopt such conditions as rules that would apply to ETCs that use other carriers' facilities to offer access to emergency services? In short, what rules should the Commission adopt if it forbears from the facilities requirement for a class of carriers?

237. More broadly, should the Commission consider issuing blanket forbearance for other purposes? For example, several carriers have requested forbearance from the facilities requirement for purposes of participating in the Commission's Link Up program, but the Commission has thus far found that no carrier has shown that such forbearance would be in the public interest. Would blanket forbearance from the facilities requirement for this purpose, taking into account the differences between the Lifeline and Link Up programs, be in the public interest? What rules would be necessary to ensure that any such forbearance protects consumers, is in the public interest, and would not encourage waste, fraud, and abuse of universal service funds?

238. Other carriers have requested forbearance from the Act's redefinition process as applied to low-income-only ETCs. Should the Commission consider forbearing from this process for a class of carriers, and if so, what rules and conditions would be necessary to protect the public interest?

239. AT&T has proposed that the Commission adopt an entirely new ETC regulatory framework. Specifically, AT&T argues that we should allow all providers of voice and broadband services to provide Lifeline discounts on a competitively neutral basis where they offer service. Under this proposal, we would establish a "Lifeline Provider" registration process whereby provider participation is not tied to the existing section 214 requirements or ETC designations, and not necessarily mandatory. Under this framework, each provider of eligible voice and broadband Internet access service, including resellers and wireless providers, would be eligible to provide Lifeline discounts to qualifying households in the areas where the provider offers the service.

240. Consistent with this alternative approach, AT&T proposes that the Commission abolish the current Lifeline tier support structure set forth in section 54.403 of our rules and replace it with a flat, fixed-dollar discount amount that could be applied to the retail price of one eligible voice service and one eligible broadband service. Similarly, AT&T proposes a flat discount approach to Link-Up. AT&T's ETC proposal also includes a recommendation that we automate program eligibility and verification processes and procedures, which is discussed in more detail above in the Database section of this NPRM.

241. We seek comment on AT&T's proposal, which would enable all providers of voice and broadband services to offer Lifeline discounts to eligible low-income households. In particular, we ask commenters to address: (1) Whether the current ETC designation process should be revised for Lifeline providers and, if so, how; (2) whether current ETCs should be able to opt out of providing Lifeline services; (3) whether it should be mandatory or optional for ETCs to participate in the Lifeline program; (4) whether consumers should be entitled to a single discount off of a single service or whether consumers should be allowed to receive multiple Lifeline discounts on multiple services, (*e.g.* voice and broadband); (5) how this new regulatory framework would be administered; (6) what processes and procedures would be necessary to support this new framework; (7) what additional steps the Commission should take to guard against waste, fraud, and abuse in the program if additional providers offering multiple services were to participate in the program; (8) the legal basis for adopting such a proposal; (9) whether there are any issues we would need to account for in terms of transition to this type of model, such as service contracts; and (10) how this proposal would impact the states, including their current roles associated with granting ETCs authority to operate in their states and overseeing their performance.

IX. Other Matters

242. We propose to eliminate section 54.418 of our rules, which required ETCs to notify low-income consumers of the DTV transition. This rule is now obsolete given the completion of the DTV transition. We seek comment on this proposal.

X. Procedural Matters

243. The proposed rules are attached. In addition to the changes discussed above, the proposed rules include non-substantive changes to the rules

applicable to the program. We seek comment on such changes.

A. Paperwork Reduction Act Analysis

244. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

B. Initial Regulatory Flexibility Analysis

245. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

C. Need for, and Objectives of, the Notice of Proposed Rulemaking

246. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounts that make basic, local telephone service affordable for low-income consumers.

247. This NPRM is one in a series of rulemaking proceedings designed to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs. In this NPRM, we propose and seek comment on comprehensive reforms to the universal service low-income support mechanism. We propose and seek comment on a package of reforms that address each of the major recommendations by the Universal Service Joint Board regarding the low-income program. We also propose a series of recommendations in accordance with a report on the program by the Government Accountability Office (GAO).

248. Specifically, we propose and seek comment on the following reforms and modernizations that may be implemented in funding year 2011 (January 1, 2011 to December 31, 2011): (1) Strengthening the Commission's rules to ensure that the low-income program subsidizes no more than one service per eligible residential address; (2) reducing waste, fraud, and abuse by addressing duplicate claims, subscriber reporting, and de-enrollment procedures; (3) streamlining and improving program administration through the establishment of uniform eligibility, verification, and certification requirements; and (4) establishing a centralized database for reporting.

D. Legal Basis

249. This NPRM, including publication of proposed rules, is authorized under sections 1, 2, 4(i)–(j), 201(b), 254, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 254, 257, 303(r), 503, 1302.

E. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

250. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

1. Wireline Providers

251. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

252. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment

of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

253. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

254. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede 2002 Census data, show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

255. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

256. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

257. *Pre-paid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

258. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, at of September 2009, the number of 800 numbers

assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be effected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

2. Wireless Carriers and Service Providers

259. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

260. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

261. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

262. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

263. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

264. The second category, *i.e.,* All Other Telecommunications, comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

265. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of Paging "that is classified under the seven-number North American Industry Classification System (NAICS) code 5172101. According to Commission data, 291 carriers have reported that they are engaged in paging or messaging service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an

entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

266. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2008 Trends Report,* 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

267. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

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

268. The reporting and recordkeeping requirements in this NPRM could have an impact on both small and large entities. Though the impact may be more financially burdensome for smaller entities, we believe the impact of such requirements is outweighed by their corresponding benefits to entities and consumers. Further, these requirements are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

269. The Commission proposes several reporting, recordkeeping, and compliance requirements for the low-income program. We propose that Eligible Telecommunications Carriers (ETCs) seeking support would extend their reporting to the Universal Service Administrative Company (USAC) to include reporting of subscribers' partial participation. Further, we propose de-enrollment procedures to reduce waste in the program. We also propose to retain the existing verification requirements for Federal default states and extend these requirements to the remainder of states.

270. *Duplicate Claims and One-Per-Residential Address.* The Commission proposes several reporting and recordkeeping requirements to reduce the likelihood that a residential address will receive more than one subsidized service through the low-income program. Specifically, we propose an information solicitation and submission process to enable USAC to identify duplicate claims of support and violations of the proposed rules, which, if adopted, will help USAC determine whether two or more ETCs are providing Lifeline-supported service to the same residential address. ETCs would be required to solicit identifying residential address information and certification from Lifeline subscribers. ETCs would then submit this data to USAC. Under the proposal, USAC would then notify ETCs of any duplicate claims of support. ETCs would also be required to notify customers with duplicate Lifeline service by phone and in writing when possible that the subscriber must select one Lifeline provider or face termination from the program. The selected ETC would then notify USAC as well as any other ETC providing Lifeline service to the customer.

271. *Line 9 Reporting.* To help ensure that ETCs seek reimbursement only for active Lifeline subscribers, the Commission proposes to require ETCs to report partial or pro rata dollars when claiming reimbursement on Form 497. Compliance with the proposed rule would require ETCs to report the number of subscribers beginning or terminating Lifeline service mid-month as well as the length of service provided during that month to each partial-month subscriber, which is similar to ETCs' billing of partial-month service to non-Lifeline consumers.

272. *De-Enrollment Procedures and Customer Usage Requirements.* As part of the effort to reduce waste in the program, and in accordance with the proposed one-per-residential address codification, the Commission proposes to require ETCs to de-enroll their Lifeline subscribers who: (1) Select another ETC after being notified of a duplicate claim; and (2) subscribers who do not use their phone for 60 days. Compliance with the proposed de-enrollment procedures would require ETCs to monitor whether a Lifeline phone was used during any 60-day period. After de-enrollment, the ETC would need to notify USAC of the de-enrollment. USAC could then pursue recovery actions against the ETC for past inappropriate support.

273. *Verification.* The Commission's rules currently require ETCs in Federal default states to implement procedures to verify annually the continued eligibility of a statistically-valid random sample of Lifeline subscribers and to provide the results to USAC. We propose to extend these standards to all states. Furthermore, in accordance with the proposed one-per-residential address requirement, we propose to require ETCs to verify consumer certifications upon enrollment and annually thereafter.

274. *Service Deposit or Minimum Service Fee.* Though we do not propose any rules on a service deposit for commencing Lifeline service or a minimum service fee for maintaining service, we seek comment on whether such rules would balance the competing needs of program efficacy with program efficiency. Specifically, we seek comment as to whether requiring ETCs to bill consumers would pose a disproportionate burden upon small entities, especially those, like pre-paid wireless resellers, that do not currently bill their consumers on a monthly basis.

275. *Database.* We propose a comprehensive reform to the low-income program: we recommend the creation of a centralized database for online certification and verification of low-income subscribers. In the NPRM, we seek comment on which entity or

entities would be best suited to create and maintain such a database. Compliance with requirements associated with a centralized database would include reporting of information solicited from Lifeline subscribers for the purposes of certifying and verifying their eligibility.

G. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

276. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

277. In this NPRM, we make a number of proposals that may have an economic impact on small entities that participate in the universal service low-income support mechanism. Specifically, as addressed above, we seek comment on: (1) Mitigating duplicate claims of service through increased reporting to USAC, in accordance with the proposed one-per-residential address rule; (2) requiring the reporting of consumers' partial-month Lifeline participation; (3) establishing clear de-enrollment procedures; and (4) establishing a uniform verification regime. If adopted, these proposals will help USAC and ETCs reduce waste, fraud, and abuse in the low-income support mechanism.

278. In seeking to minimize the burdens imposed on small entities where doing so does not compromise the goals of the universal service mechanism, we have invited comment on how these proposals might be made less burdensome for small entities. We again invite commenters to discuss the benefits of such changes on small entities and whether these benefits are outweighed by resulting costs to ETCs that might also be small entities. We anticipate that the record will reflect whether the overall benefits of such programmatic changes would outweigh the burdens on small entities, and if so, commenters will suggest alternative ways in which the Commission could lessen the overall burdens on small entities. We encourage small entities to comment.

279. We have taken the following steps to minimize the impact on small entities. First, to ease the administrative burden on applicants, we propose an approach that minimizes reporting requirements by appropriating Form 497 for further information collection rather than creating an additional form. In accordance with the E-Sign Act, we propose to allow consumers to sign their certifications electronically, eliminating significant reporting and mailing burdens currently placed on all entities. In order to minimize the impact on ETCs, including small entities, we have placed the burden of checking addresses for duplicate claims upon USAC, rather than ETCs. Furthermore, in an effort to make verification simpler for all ETCs, we have proposed uniform rules of eligibility and verification. Most significantly, however, we contemplate a phased structure for reporting to a centralized database: Large entities would begin populating the proposed database initially, with small entities following suit after a period of time during which the process will be made less burdensome when possible.

H. Federal Rules That May Duplicate, or Conflict With Proposed Rules

280. None.

I. Ex Parte Presentations

281. The rulemaking this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

J. Comment Filing Procedures

282. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

283. In addition, one copy of each paper filing must be sent to each of the following: (i) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160; (ii) Kimberly Scardino, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B448, Washington, DC 20554; e-mail: *Kimberly.Scardino@fcc.gov*; and (iii) Charles Tyler, Telecommunications, Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554, e-mail: *Charles.Tyler@fcc.gov*.

284. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

285. Filings and comments are also 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. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160, or by facsimile at (202) 488–5563.

286. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

287. For further information, contact Kimberly Scardino at (202) 418–1442 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.101 [Amended]

2. Amend § 54.101 by removing and reserving paragraph (a)(9).

3. Amend § 54.400 by:

a. Revising paragraphs (a) and (b)

b. Removing paragraph (c);

c. redesignating paragraphs (e) and (f) as paragraphs (c) and (d), respectively;

d. Revising newly redesignated paragraph (c); and

e. Adding new paragraph (e).

The revisions and addition read as follows:

§ 54.400 Terms and definitions.

(a) *Qualifying low-income consumer.* A "qualifying low-income consumer" is a consumer who meets the qualifications for Lifeline, as specified in § 54.409, and complies with the one-per-residence limitation, as specified in § 54.402.

(b) *Duplicate support.* Duplicate support exists when two or more ETCs are receiving Lifeline or Link Up support for the same residential address at the same time; or an ETC is receiving two or more Lifeline or Link Up support reimbursements for the same residence at the same time.

(c) *Eligible resident of Tribal lands.* An "eligible resident of Tribal lands" is a "qualifying low-income consumer," as defined in paragraph (a) of this section, living on a reservation or on Tribal lands designated as such by the Commission. A "reservation" is defined as any Federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments. "Tribal lands" also shall mean any land designated as Tribal lands by the Commission for purposes of this subpart pursuant to the designation process in § 54.402.

* * * * *

(e) *Customary charge for commencing telecommunications service.* A "customary charge for commencing telecommunications service" is the ordinary charge an ETC routinely imposes on all customers within a state to initiate service. Such a charge is limited to an actual charge assessed on all customers to initiate service with that ETC. A charge imposed only on Lifeline and/or Link Up customers to initiate service is not a customary charge for commencing telecommunications service. Activation charges waived, reduced, or eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support.

4. Amend § 54.401 by revising paragraph (a)(3) and removing and reserving paragraph (c), to read as follows:

§ 54.401 Lifeline defined.

(a) * * *

(3) That provides voice telephony service as specified in § 54.101(a).

* * * * *

5. Add § 54.402, to read as follows:

§ 54.402 Tribal lands designation process.

The Commission may designate specific areas as Tribal lands for purposes of this subpart for areas or communities that fall outside the boundaries of a designated reservation, but which maintain the same characteristics as those defined. A request for designation must be formally requested by an official of a Federally recognized Tribe who has proper jurisdiction and must be filed pursuant to the Commission's rules. Good cause for the designation may be shown by providing evidence of a nexus between the area or community and the Tribe, such as identifying an area in which the Federal government delivers services to Tribal citizens; detailing how program support to the area would aid the Tribe in serving the needs and interests of its citizens in that community and further the Commission's goals of providing Tribal support. The region or community areas associated with the Tribe, as outlined and described in a grant of designation request, shall be considered Tribal lands for the purposes of this Subpart.

6. Amend § 54.403 by revising paragraphs (a)(4) introductory text, (b), and (c) to read as follows:

§ 54.403 Lifeline support amount.

(a) * * *

(4) *Tier Four.* Additional Federal Lifeline support of up to $25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(c), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tier-Four amount to qualifying eligible residents of Tribal lands and that it has received any non-Federal regulatory approvals necessary to implement the required rate reduction, to the extent that:

* * * * *

(b) *Maximum Lifeline Support Amount.* (1) For a qualifying low-income consumer who is not an eligible resident of Tribal lands, as defined in § 54.400(c), the Federal Lifeline support amount shall not exceed $3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or § 69.152(d) and (q) of this chapter, whichever is applicable.

(2) For an eligible resident of Tribal lands, the Federal Lifeline support amount shall not exceed $28.50 plus

that same End User Common Line charge.

(3) For a qualifying low-income consumer who purchases a bundled service package or a service plan that includes optional calling features, the Federal Lifeline support amount shall not exceed the maximum Lifeline support amount as determined in accordance with § 54.403(b)(1) or (2) of this subpart, whichever is applicable.

(c) *Application of Discount Amount.* Eligible telecommunications carriers that charge Federal End User Common Line charges or equivalent Federal charges shall apply Tier-One Federal Lifeline support to waive the Federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional Federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-Federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One Federal Lifeline support amount, plus any additional support amount, to reduce the cost of any eligible residential Lifeline service plan or package selected by a qualified low-income consumer that provides voice telephony service with the performance characteristics listed in § 54.101(a), and charge Lifeline consumers the resulting amount.

7. Amend § 54.405 by adding a heading to the beginning of paragraph (c) and adding paragraph (e) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(c) *Termination for ineligibility.* * * *

* * * * *

(e) *De-enroll for disqualification.* Notwithstanding § 54.405(c) of this section, notify Lifeline subscribers of impending termination of Lifeline service if the subscriber fails:

(1) To respond to notifications regarding duplicate support;

(2) To respond to ETC verification attempts made pursuant to § 54.410(d); or

(3) To use the supported service during a 60-day period. ETCs shall provide the subscriber 30 days following the date of the impending termination letter in which to demonstrate that Lifeline service shall not be terminated. ETCs shall terminate the Lifeline service if the subscriber fails to demonstrate that Lifeline service shall not be terminated. ETCs shall not seek Lifeline reimbursement for the subscriber during the 30-day period.

8. Amend § 54.407 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

* * * * *

(b) The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer who has used the supported service to initiate or receive a voice call within the last 60 days.

* * * * *

(d) The eligible telecommunications carrier seeking support must report partial or pro rata dollars when claiming reimbursement for discounted services to low-income consumers who receive service for less than a month.

9. Add § 54.408 to read as follows:

§ 54.408 One-per-residence.

(a) Lifeline and Link Up support is limited to one Lifeline discount and/or one Link Up discount per billing residential address.

(1) *Billing Residential address.* For purposes of the Lifeline and Link Up programs, a "billing residential address" is a unique residential address recognized by the U.S. Postal Service address.

(2) Lifeline and Link Up support is available only to establish service at the qualifying low-income consumer's primary residential address. The consumer must initially certify at enrollment that the consumer's billing residential address of record is his or her primary residential address.

(b) To be considered an eligible consumer for the purposes of Lifeline and Link Up support, a consumer must meet the criteria set forth in section § 54.409 of this part.

10. Revise § 54.409 to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service, a consumer's household income, as defined in § 54.400(d), must be at or below 135% of the Federal Poverty Guidelines, or a consumer must participate in one of the following Federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families.

(b) A consumer that is an eligible resident of Tribal lands, as defined by § 54.400(c) or § 54.402, shall be a "qualifying low-income consumer," as defined by 54.400(a), and shall qualify to receive Tiers One, Two, and Four Lifeline support if the consumer's residence:

(1) Has income that meets the threshold established in paragraph (a) of this section or participates in one of the Federal assistance programs identified in paragraph (a) of this section; or

(2) Participates in one of the following Tribal-specific Federal assistance programs: Bureau of Indian Affairs general assistance, Tribally administered Temporary Assistance for Need Families (TANF); Head Start (but only those households meeting its income qualifying standard); or Food Distribution Program on Indian Reservations (FDPIR). Such qualifying low-income consumer shall also qualify for Tier Three Lifeline support if the carrier offering the Lifeline service is not subject to the regulations of the state and provides carrier-matching funds, as described in § 54.403(a)(3).

(c) Each eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer pursuant to paragraphs (a) or (b) of this section must obtain that consumer's signature on a document certifying under penalty of perjury that:

(1) The consumer's residence receives benefits from one of the programs listed in paragraph (a) or (b) of this section, and that the consumer presented documentation of program participation, as described in 54.410(b), which accurately represents the program participation of the consumer's residence; or the consumer's residence meets the income requirement of paragraph (a) of this section, and that the consumer presented documentation of income, as described in §§ 54.400(f), 54.410(a), which accurately represents the consumer's income; and

(2) If an eligible resident of Tribal lands, that the consumer lives on a reservation or Tribal lands, as defined in § 54.400(c) and § 54.402; and

(3) The consumer will notify the carrier within 30 days if that consumer ceases to participate in the program or programs, if the consumer's income exceeds 135% of the Federal Poverty Guidelines, or if the consumer otherwise ceases to meet the criteria for receiving program support.

11. Revise § 54.410 to read as follows:

§ 54.410 Certification and Verification of Consumer Qualification for Lifeline.

(a) *Certification of income qualification.* Prior to enrollment in Lifeline, consumers qualifying for Lifeline under an income-based criterion must present documentation of

their income and certify that they will be receiving support for only one Lifeline discount per residence. By six months from the effective date of these rules, eligible telecommunications carriers in all states must implement certification procedures to document consumer-income-based eligibility for Lifeline prior to a consumer's enrollment if the consumer is qualifying under the income-based criterion specified in § 54.409(a). Acceptable documentation of income eligibility includes the prior year's state or Federal tax return, current income statement from an employer or paycheck stub, a Social Security statement of benefits, a Veterans Administration statement of benefits, a retirement/pension statement of benefits, an Unemployment/Workers' Compensation statement of benefits, Federal notice letter of participation in General Assistance, a divorce decree, child support, or other official document. If the consumer presents documentation of income that does not cover a full year, such as current pay stubs, the consumer must present the same type of documentation covering three consecutive months within that calendar year. States that mandate state Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with the state Lifeline program.

(b) *Certification of program qualification.* Consumers qualifying for Lifeline under a program-based criterion must present documentation of their household participation in a qualifying program and certify that they will be receiving support for only one Lifeline discount per residence prior to enrollment in Lifeline. By six months from the effective date of these rules, eligible telecommunications carriers in all states must implement certification procedures to document consumer-program-based eligibility for Lifeline prior to a consumer's enrollment if the consumer is qualifying under the program-based criterion specified in § 54.409(a) and (b). Acceptable documentation of program eligibility includes the prior year's statement of benefits from the program, program participation documents, Federal notice letter of participation in the program, or other official document. If the consumer presents documentation of program participation that does not cover a full year, such as current program benefits, the consumer must present the same type of documentation covering three consecutive months within that calendar year. States that mandate State Lifeline support may impose additional standards on eligible telecommunications carriers operating in their States to ensure compliance with the State Lifeline program.

(c) *Self-certifications.* After income and program based certification procedures are implemented, eligible telecommunications carriers are required to make and obtain certain self-certifications, under penalty of perjury, related to the Lifeline program. Eligible telecommunications carriers must retain records of all self-certifications.

(1) An officer of the eligible telecommunications carrier must certify that the eligible telecommunications carrier has procedures in place to review income and program documentation and that, to the best of his or her knowledge, the carrier was presented with documentation of the consumer's income qualification or program participation.

(2) Lifeline and Link Up subscribers must initially certify at enrollment and during continued verification that they are receiving support for only one line per residence, consistent with the one-per-residence limitation as specified in § 54.408.

(3) Consumers qualifying for Lifeline under an income-based criterion must certify the number of individuals in their residence on the document required in § 54.409(c).

(d) *Verification of continued eligibility.* Consumers qualifying for Lifeline shall be required to verify continued eligibility on an annual basis. By [DATE 6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], eligible telecommunications carriers in all States shall implement procedures to verify annually the continued eligibility of a statistically valid sample [TBD] of their Lifeline subscribers for continued eligibility.

(1) Eligible telecommunications carriers shall require each customer to certify that they are receiving support for only one line per residence. Eligible telecommunications carriers may verify directly with a State that particular customers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the State, they may verify directly with the customers.

(2) All eligible telecommunications carriers will be required to provide the results of their verification efforts to the Commission and the Administrator on the Annual Lifeline Certification and Verification Form (currently OMB 3060–0819) by August 31 each year. Eligible telecommunications carriers shall submit data to the Commission and Administrator regarding consumer qualifications for eligibility, including program-based and income-based eligibility, the number of customers that qualify based on income and program participation, the number of subscribers that qualify for each eligible program, the number of non-responders, and the number of customers de-enrolled and in the process of being terminated or de-enrolled. Eligible telecommunications carriers shall submit each customer name, address, and number of individuals in the customer's residence for those customers qualifying based on income criterion.

(e) *Preventing and Resolving Duplicate Support.* ETCs shall provide the Administrator with their Lifeline and Link Up customer names, addresses, social security numbers, and/or other unique residence-identifying information as specified in the form and format requested on the Form 497 for the purpose of preventing and resolving situations involving duplicate support.

12. Amend § 54.413 by revising the first sentence in paragraph (b) to read as follows:

§ 54.413 Reimbursement for revenue forgone in offering a Link Up program.

* * * * *

(b) In order to receive universal service support reimbursement for providing Link Up, eligible telecommunications carriers must keep accurate records of the revenues they forgo in reducing their customary charge for commencing telecommunications service, as defined in § 54.400(e), and for providing a deferred schedule for payment of the charges assessed for commencing service for which the consumer does not pay interest, in conformity with § 54.411. * * *

13. Revise § 54.415 to read as follows:

§ 54.415 Consumer qualification for Link Up.

(a) The consumer qualification criteria for Link Up shall be the criteria set forth in § 54.409(a).

(b) Notwithstanding paragraph (a) of this section, the consumer qualification criteria for an eligible resident of Tribal lands, as defined in § 54.400(c) and § 54.402, shall qualify to receive Link Up support.

14. Revise § 54.416 to read as follows:

§ 54.416 Certification of consumer qualification for Link Up.

Consumers qualifying under income-based or program-based criteria must present documentation of their qualification prior to enrollment in Link Up consistent with the requirements set forth in §§ 54.410(a) and (b).

15. Amend § 54.417 by revising paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 54.417 Recordkeeping requirements.

(a) Eligible telecommunications carriers must maintain records to document compliance with all Commission and State requirements governing the Lifeline/Link Up programs for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §§ 54.409(c) and 54.410(c) for as long as the consumer receives Lifeline service from that eligible telecommunications carrier or until audited by the Administrator. If an eligible telecommunications carrier provides Lifeline discounted wholesale services to a reseller, it must obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline/Link Up programs.

(b) * * * To the extent such a reseller provides discounted services to low-income consumers, it is obligated to comply with the eligible telecommunications carrier requirements listed in this subpart.

§ 54.418 [Removed and Reserved]

16. Remove and reserve § 54.418.

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FEDERAL REGISTER

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Part III

The President

Proclamation 8638—National Poison Prevention Week, 2011

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Presidential Documents

Title 3—

The President

Proclamation 8638 of March 18, 2011

National Poison Prevention Week, 2011

By the President of the United States of America

A Proclamation

Each day, emergency rooms treat nearly 2,000 Americans for accidental poisonings, and dozens die as a result of ingesting, inhaling, or otherwise exposing themselves to poisonous substances. In many cases, these tragic incidents are preventable. During National Poison Prevention Week, I encourage all Americans to identify possible dangers in the home, take action to address poisoning hazards, and learn how to respond if a poison emergency should occur.

Children are particularly susceptible to unintentional poisoning. More than half of all reported poison exposures involve children under the age of six, and many occur when unsupervised children find and consume medicines or harmful chemicals. Unintentional poisonings among young people often occur when misusing or abusing prescription medications such as pain killers, sedatives, and stimulants taken from a home medicine cabinet. Parents and caregivers can help prevent these injuries by taking simple steps to secure medications and other dangerous materials including resealing child-resistant containers, placing drugs and toxic chemicals out of reach of children, and storing all these products in locked or childproof cabinets.

Sadly, death rates from unintentional poisonings have increased steadily in recent years. Many adult poisonings stem from accidental or intentional exposure to over-the-counter or prescription drugs. These can be avoided by reading labels before taking medications, storing medicines in their original containers, and safely disposing of unused prescription medication. These actions can reduce the risk posed by medications with abuse potential. All Americans can help prevent needless harm from hazardous materials by becoming more aware of the dangers of poisonings and the ways we can prevent and respond to these incidents.

In the event of an accidental poisoning, quick action can prevent serious injury and save lives. If confronted with a suspected poisoning, individuals should call the national poison control hotline at 1-800-222-1222. I encourage families to post this number near their home telephone, which connects callers to potentially life-saving information at local and regional poison control centers 24 hours a day, seven days a week.

To encourage Americans to learn more about the dangers of accidental poisonings and to take appropriate preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March each year as "National Poison Prevention Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim March 20 through March 26, 2011, as "National Poison Prevention Week." I call upon all Americans to observe this week by taking actions to protect their families from hazardous household materials and from misuse of prescription medications.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of March, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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