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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575–AC83

Single Family Housing Guaranteed Loan Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements two changes in the regulations for the Rural Housing Service (RHS) Section 502 Single Family Housing Guaranteed Loan Program (SFHGLP) by eliminating the lender's published Department of Veterans Affairs (VA) rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans and by allowing the Secretary to seek indemnification from the originating lender if a loss is paid under certain circumstances. This action is taken to achieve savings for the taxpayer, simplify regulations, and promote efficiency in managing the SFHGLP.

DATES: *Effective Date:* August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joaquin Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2241, STOP 0784, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 720–1465, E-mail: *joaquin.tremols@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federalism—Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees of loans made to individuals. Changes impacting lenders will impact all approved lenders doing business under this program. There is no distinction made between small and large lenders.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575–0078.

E-Government Act Compliance

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

Non-Discrimination Statement

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Background

In the spring of 2009, the Inspector General completed an audit of the controls over lending activities in the SFHGLP. The audit evaluated the systems and processes to ensure that lenders (1) submit accurate and legitimate borrower eligibility data and (2) set interest rates on loans within Agency guidelines. The audit report made a number of recommendations for what the SFHGLP can do to streamline operations, prevent fraud, and improve efficiency in its mission. As a result of the audit a proposed rule was published in the **Federal Register** on May 19, 2010 (75 FR 27949).

Under the existing SFHGLP regulation, lenders may set an interest rate for a loan that does not exceed the higher of the Lender's published rate for VA first mortgage loans with no discount points or the current Federal National Mortgage Association (Fannie Mae) rate as defined in 7 CFR 1980.302(a), currently defined as the current Fannie Mae posted yield for 90-day delivery (Actual/Actual), plus six-tenths of 1 percent for 30-year fixed rate conventional loans, rounded up to the nearest one-quarter of 1 percent. The first change made by this final rule eliminates the lender's published VA rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans. The effect of this action is to create a more uniform, simpler standard for interest rates under the SFHGLP, whereby lenders will always use the current Fannie Mae rate as the rate ceiling. The Fannie Mae rate is the interest rate guidance most widely utilized by approved lenders. It is also the most accessible to lenders and the Agency when documenting loan files to ensure affordable interest rates are extended to SFHGLP borrowers.

The second change made by this final rule relates to the rights of the Secretary when the Secretary has to pay a claim under the guarantee for the loan and the original lender did not originate the loan in accordance with the program requirements. This change allows the Secretary in certain circumstances to seek indemnification from the originating lender for the Secretary's loss. This change promises to save taxpayer money and incentivize due care on the part of lenders by allowing the Government to recoup the funds it pays out in the event of a claim under the guarantee where the original lender did not comply with SFHGLP requirements.

Discussion of Public Comments Received on the May 19, 2010 Proposed Rule

The Agency received comments from three different sources in response to the Proposed Rule. These comments came from advocacy groups and a community bank.

One commenter submitted a comment on the Single Family Housing Direct Loan Program and expressed general concern about the affordability of housing for low-income families. The Agency acknowledges this comment and notes that the changes being adopted will affect only the Guaranteed Loan Program.

One commenter agreed with the Agency that the Fannie Mae published rate is used by a much broader base of investors than the VA index and stated that the rule change creating a uniform standard will cause only minimal disruptions in business while lenders implement the new policy. This commenter requested that the final rule provide at least a 60-day implementation period to allow lenders to make necessary system changes. The Agency notes that the effective date of the final rule is 60 days from the date of publication in the **Federal Register**.

The commenter also recommended that the Agency revise the rule to require that the Ginnie Mae index be used if the Fannie Mae index is not available. The commenter made this recommendation because the commenter is concerned about future changes to government sponsored enterprises (GSEs). The Agency is aware of the vulnerabilities surrounding the GSEs and the potential for future changes; however, the Agency believes it would be premature to name a backup index at this time. Additionally, Ginnie Mae does not publish a similar index. The Agency, therefore, has made no changes to the final rule in response to this comment.

One commenter expressed concern that the proposed indemnification policy is too broad. The commenter agreed that indemnification is appropriate in cases where a lender commits fraud, but the commenter expressed concern about a lender being required to provide indemnification due to an oversight by the lender or deception by the borrower. The Agency has revised the rule to clarify and limit the circumstances under which indemnification may be required. These changes, which address the commenter's concerns, are described in greater detail below.

Another commenter made similar comments. The commenter agreed that indemnification is appropriate in cases of lender fraud or lender negligence, but the commenter expressed concern about lenders being held liable due to unforeseen circumstances or circumstances beyond their control. This commenter recommended four specific changes to the rule.

First, the commenter stated that lender indemnification for fraud should exclude fraud committed by a third party, such as a borrower, real estate agent, or seller. The Agency does not intend to seek indemnification when fraud was committed by a third party and the lender had no knowledge of such fraud. The Agency has revised the rule to clarify that indemnification will apply ''when there was fraud or misrepresentation in connection with origination of the loan of which the originating Lender had actual knowledge at the time it became such Lender or which the originating Lender participated in or condoned.''

Second, the commenter stated that indemnification should not be automatic in cases where the Agency pays a claim within 24 months of closing. The commenter wrote that lenders should not be subject to indemnification when borrowers default on their loans due to circumstances beyond the lender's control. The Agency disagrees with the commenter that indemnification is automatic. A prerequisite to indemnification in the proposed rule was a determination by the Agency that the Lender did not originate a loan in accordance with the requirements in 7 CFR part 1980, subpart D. Further, the Agency has revised the rule to clarify what conditions must be satisfied before the Agency can require indemnification after paying a claim within 24 months of loan closing.

Third, the commenter recommended that in order for a lender to be liable due to misrepresentation, the misrepresentation must be proven by clear and convincing evidence and the misrepresentation must have been discoverable prior to loan closing. The Agency has revised the rule to provide clarification regarding the circumstances under which indemnification may be required. If RHS pays a loss claim within 24 months of loan origination as a result of the originating lender's nonconforming action or failure to act, RHS may seek indemnification if: (1) The originating lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to RHS; (2) the originating lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines; (3) the originating lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property; or (4) the originating lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with 7 CFR 1980.334(a). In addition, RHS may seek indemnification at any time, regardless of how long ago the loan closed, if RHS determines that there was fraud or misrepresentation in connection with the origination of the loan of which the originating lender had actual knowledge at the time it became such lender or which the originating lender participated in or condoned and RHS paid a loss claim as a result of the originating lender's nonconforming action or failure to act. In this context, misrepresentation includes negligent misrepresentation. With regard to the commenter's other suggestion, the Agency has decided not to incorporate the ''clear and convincing evidence'' standard into the rule. The Agency will seek indemnification only when an analysis of all available evidence establishes that indemnification is appropriate under the standards set forth in the rule. Lenders are protected in that a decision to require indemnification from the lender may be appealed to the USDA National Appeals Division (NAD), and the final determination of NAD shall be reviewable by any United States District Court of competent jurisdiction according to NAD regulations at 7 CFR part 11.

Fourth, the commenter requested that program violations be limited to only material program violations that adversely affect the program. The Agency agrees with the commenter that indemnification is appropriate only where the lender's violation is material. As discussed above, the Agency has revised the rule to clarify and limit the circumstances under which indemnification may be required. The Agency may seek indemnification only when RHS pays a claim under the loan note guarantee as a result of the originating Lender's nonconforming action or failure to act.

The commenter also expressed concern about whether lenders would have appeal rights. As noted above, indemnification will be treated as an adverse decision, and the lender may appeal the decision. The Agency has revised section 1980.399(a)(2) of the rule to make clear that the Lender may appeal an indemnification decision alone, without the participation of the borrower.

One commenter stated that the Agency's indemnification policy should be like the Federal Housing Administration's policy in that it should apply only to the originating lender and not to the servicer. The Agency agrees and has clarified that indemnification may only be sought from originating lenders. As noted in 7 CFR 1980.309(f), lenders are fully responsible for their own actions and the actions of those acting on their behalf, including during loan origination.

One commenter asked for clarification whether the same indemnification standards would apply to loans that are manually underwritten and loans that are submitted through the Guaranteed Underwriting System (GUS). The Agency will apply the same indemnification standards to all guaranteed loans.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

■ 1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart D—Rural Housing Loans

■ 2. Section 1980.308 is revised to read as follows:

§ 1980.308 Full faith and credit and indemnification.

(a) *Full faith and credit.* The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the lender conducts liquidation

in an expeditious manner, in accordance with the provisions of § 1980.374 of this subpart, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

(b) *Indemnification.* If RHS determines that a Lender did not originate a loan in accordance with the requirements in this subpart, and RHS pays a loss claim under the loan note guarantee as a result of the originating Lender's nonconforming action or failure to act, RHS may revoke the originating Lender's eligibility status in accordance with § 1980.309(h) of this subpart and may also require the originating Lender:

(1) To indemnify RHS for the loss, if the payment under the guarantee was made within 24 months of loan closing, when one or more of the following conditions is satisfied:

(i) The originating Lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to RHS;

(ii) The originating Lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines;

(iii) The originating Lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property;

(iv) The originating Lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with § 1980.334(a) of this subpart; or,

(2) To indemnify RHS for the loss, regardless of how long ago the loan closed, if RHS determines that there was fraud or misrepresentation in connection with the origination of the loan of which the originating Lender had actual knowledge at the time it became such Lender or which the originating Lender participated in or condoned. Misrepresentation includes negligent misrepresentation.

■ 3. Section 1980.320 is revised to read as follows:

§ 1980.320 Interest rate.

The interest rate must not exceed the established, applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the current Fannie Mae rate as defined in § 1980.302(a) of this subpart. The Lender must document the rate and the date it was determined.

■ 4. Section 1980.353(c)(4) is revised to read as follows:

§ 1980.353 Filing and processing applications.

* * * * *

(c) * * *

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320 of this subpart.

* * * * *

■ 5. Section 1980.399(a)(2) is revised to read as follows:

§ 1980.399 Appeals.

* * * * *

(a) * * *

(2) The Lender may appeal without the borrower where RHS has:

(i) Denied or reduced the amount of a loss payment to the Lender; or

(ii) Required an originating Lender to indemnify RHS for a loss payment.

* * * * *

Dated: April 15, 2011.

Dallas Tonsanger,

Under Secretary, Rural Development.

Dated: April 21, 2011.

Michael Scuse,

Acting Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2011–13061 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2008–0112]

RIN 0579–AD31

Importation of Horses From Contagious Equine Metritis-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of enforcement.

SUMMARY: On March 25, 2011, we published an interim rule in the **Federal Register** to amend the regulations regarding the importation of horses from countries affected with contagious equine metritis (CEM) by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. That interim rule became effective on March 25, 2011; however, we are delaying the enforcement of the interim rule until July 25, 2011. This action is necessary to provide CEM testing facilities time to make adjustments to their operating procedures that are necessary for the rule to be successfully implemented.

DATES: Enforcement of the interim rule amending 9 CFR part 93, published at 76 FR 16683–16686 on March 25, 2011, is delayed until July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Buck, Senior Staff Veterinarian, Equine Imports, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. ''Subpart C—Horses,'' §§ 93.300 through 93.326, pertains to the importation of horses into the United States. Sections 93.301 and 93.304 of the regulations contain specific provisions for the importation of horses from regions affected with contagious equine metritis (CEM), which is a highly contagious venereal disease of horses and other equines caused by an infection with the bacterium *Taylorella equigenitalis.*

On March 25, 2011, we published an interim rule in the **Federal Register** (76 FR 16683–16686, Docket No. APHIS–2008–0112) to amend the regulations regarding the importation of horses from countries affected with CEM by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. The provisions of the interim rule became effective March 25, 2011, and we will consider all comments on the interim rule received on or before May 24, 2011.

Delay of Enforcement

After the publication of the interim rule, we received comments that raised a variety of issues, including the feasibility of immediately implementing certain requirements.

Based on our review of the comments received to date, we consider it advisable to delay our enforcement of

the interim rule until July 25, 2011. This additional time will allow CEM testing facilities to make any adjustments to their operating procedures that may be necessary in order to successfully implement the interim rule.

Accordingly, we are delaying enforcement of the interim rule amending 9 CFR part 93, published at 76 FR 16683–16686 on March 25, 2011, until July 25, 2011.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 25th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–13360 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1393]

RIN 7100–AD55

Truth in Lending; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain typographical errors in the regulation and the staff commentary of the final rule published in the **Federal Register** of April 25, 2011. The final rule amends Regulation Z, which implements the Truth in Lending Act, in order to clarify certain aspects of the rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009.

DATES: *Effective Date:* October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Benjamin K. Olson, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board published a final rule in the **Federal Register** of April 25, 2011 (76 FR 22948) (FR Doc. 2011–8843), amending Regulation Z and the staff commentary to the regulation, in order to clarify certain aspects of the rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009. As published, the final rule inadvertently omits the revisions to redesignated § 226.58(b)(7) and the revised commentary to § 226.55(b)(6). In addition, the published final rule misprints comment 51(b)(2)–1 and contains other typographical errors.

Accordingly, in the final rule, FR Doc. 2011–8843, published on April 25, 2011, (76 FR 22948) make the following corrections:

PART 226—[CORRECTED]

§ 226.9 [Corrected]

■ 1. On page 23000, in the third column, line 55, correct amendatory instruction 7 to read as follows:

Section 226.9 is amended by adding paragraph (b)(3)(iii) and by revising paragraphs (c)(2)(i)A), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv)(A)(*1*), (c)(2)(iv)(B), (c)(2)(iv)(D), (c)(2)(v)(B)(*1*) through (*3*), (c)(2)(v)(C), and (c)(2)(v)(D).

§ 226.58 [Corrected]

■ 2. On page 23003, in the third column, line 48, correct amendatory instruction 14.B. to read as follows:

B. Redesignating paragraphs (b)(4) through (7) as paragraphs (b)(5) through (8), and revising redesignated paragraph (b)(7);

■ 3. On page 23004, in the first column, line 24, in § 226.58, correct paragraph (b) by adding paragraph (b)(7) to read as follows:

(7) *Pricing information.* For purposes of this section, ''pricing information'' means the information listed in § 226.6(b)(2)(i) through (b)(2)(xii). Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

* * * * *

Supplement I to Part 226 [Corrected]

■ 4. On page 23016, in the first column, line 3, italicize the heading ''9(c) Change in terms.''

■ 5. On page 23021, in the third column, line 29, correct paragraph 1. of *51(b)(2)* to read as follows:

1. *Credit line request by joint accountholder aged 21 or older.* The requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(ii) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old initiates the request for the increase.

■ 6. On page 23034, in the first column, line 24, correct *55(b)* by adding *55(b)(6)* to read as follows:

55(b)(6) Servicemembers Civil Relief Act exception.

1. *Rate, fee, or charge that does not exceed rate, fee, or charge that applied before decrease.* When a rate or a fee or charge subject to § 226.55 has been decreased pursuant to 50 U.S.C. app. 527 or a similar federal or state statute or regulation, § 226.55(b)(6) permits the card issuer to increase the rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies. However, § 226.55(b)(6) prohibits the card issuer from applying to any transactions that occurred prior to the decrease a rate, fee, or charge that exceeds the rate, fee, or charge that applied to those transactions prior to the decrease (except to the extent permitted by one of the other exceptions in § 226.55(b)). For example, if a temporary rate applied prior to a decrease in rate pursuant to 50 U.S.C. app. 527 and the temporary rate expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to a decrease in rate pursuant to 50 U.S.C. app. 527, the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(2).

2. *Decreases in rates, fees, and charges to amounts consistent with 50 U.S.C. app. 527 or similar statute or regulation.* If a card issuer deceases an annual percentage rate or a fee or charge subject to § 226.55 pursuant to 50 U.S.C. app. 527 or a similar federal or state statute or regulation and if the card issuer also decreases other rates, fees, or charges (such as the rate that applies to new transactions) to amounts that are consistent with 50 U.S.C. app. 527 or a similar federal or state statute or regulation, the card issuer may increase those rates, fees, and charges consistent with § 226.55(b)(6).

3. *Example.* Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. The account is also subject to a monthly maintenance fee of $10. On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% and ceases to impose the $10 monthly maintenance fee and other fees (including late payment fees) pursuant to 50 U.S.C. app. 527. The card issuer also decreases the rate that applies to new transactions to 6%. During year two, the consumer uses the account for $1,000 in new transactions. On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance and to any remaining portion of the $1,000 balance. The notice also states that the $10 monthly maintenance fee and other fees (including late payment fees) will resume on February 15 of year three. Consistent with § 226.9(c)(2)(iv)(B), the card issuer is not required to provide a right to reject in these

circumstances. On February 15 of year three, § 226.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 and $1,000 balances at the variable rate determined using the 10-point margin and to resume imposing the $10 monthly maintenance fee and other fees (including late payment fees).

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary under delegated authority, May 19, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–12795 Filed 5–27–11; 8:45 am]

BILLING CODE 6210–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No.: CFPB–HQ–2011–1]

Identification of Enforceable Rules and Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice for Public Comment.

SUMMARY: Section 1063(i) of the Consumer Financial Protection Act of 2010 (''Act'') [1] requires the Bureau of Consumer Financial Protection (''CFPB'' or ''Bureau'') to publish in the **Federal Register** a list of the rules and orders that will be enforced by the CFPB. This notice sets forth a list for public comment. A final list will be published not later than the designated transfer date, July 21, 2011.

DATES: Comments are invited and must be received on or before June 30, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Docket No. CFPB–HQ–2011–1.'' Comments should be submitted to:

- *Electronic: http://www.regulations.gov.*
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Office of the General Counsel, CFPB, 1801 L Street, NW., Washington, DC 20036.

All comments received will be posted to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying in Treasury's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. An appointment to inspect comments can be made by telephoning (202) 622–0990.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Rebecca G. Deutsch, Office of the General Counsel, CFPB, 1801 L Street, NW., Washington, DC 20036, *rebecca.deutsch@treasury.gov.*

SUPPLEMENTARY INFORMATION: Under the Act, on the designated transfer date, July 21, 2011,[2] certain consumer financial protection authorities will transfer from seven transferor agencies [3] to the CFPB, and the CFPB will also assume certain new authorities. Subject to the limitations and other provisions of the Act, the CFPB will be authorized to enforce, *inter alia,* rules and orders issued by the transferor agencies under the enumerated consumer laws.[4] The CFPB will also have authority to enforce in some circumstances the Federal Trade Commission's Telemarketing Sales Rule and its rules under the Federal Trade Commission Act, although the Federal Trade Commission will retain full authority over these rules.[5]

Section 1063(i) of the Act provides that, not later than the designated transfer date, the CFPB ''(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the Bureau; and (2) shall publish a list of such rules and orders in the **Federal Register**.'' The CFPB has consulted with each transferor agency pursuant to section 1063(i) and has developed a list of rules for which it seeks public comment.[6] After consultation, neither the transferor agencies nor the CFPB have identified any orders for inclusion in the list. After considering any public comments, the CFPB will publish a final list in the **Federal Register** not later than the designated transfer date.

The CFPB's enforcement authority is defined by the Act and other applicable law. As a result, the list required by section 1063(i) will not have a substantive effect on any rules or orders or the parties who may be subject to them; it will merely provide a convenient reference source. Accordingly, the inclusion or exclusion of any rule or order would not alter the CFPB's authority. In addition, section 1063(i) does not require the CFPB to update, correct, or otherwise maintain the final list. Because the list under section 1063(i) reflects the CFPB's interpretation of its authority under the Act and relates to agency organization, procedure, or practice, the list is not subject to the notice-and-comment requirements of the Administrative Procedure Act (''APA'') (5 U.S.C. 551 *et seq*).[7] Nevertheless, the Bureau invites public comment during a thirty-day period.

Accordingly, pursuant to section 1063(i), the CFPB invites public comment on the following list of rules that will be enforceable by the CFPB subject to the limitations and other provisions of the Act:[8]

A. Board of Governors of the Federal Reserve

1. 12 CFR Part 202—Equal Credit Opportunity Act (Regulation B)
2. 12 CFR Part 203—Home Mortgage Disclosure (Regulation C)
3. 12 CFR Part 205—Electronic Fund Transfers (Regulation E)
4. 12 CFR 208.101–105 & Appendix A to Subpart I—Registration of Residential Mortgage Loan Originators (Regulation H, Subpart I)
5. 12 CFR Part 213—Consumer Leasing (Regulation M)
6. 12 CFR Part 216—Privacy of Consumer Financial Information (Regulation P)
7. 12 CFR Part 222—Fair Credit Reporting (Regulation V), except with

[1] The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.

[2] The Secretary of the Treasury designated this date pursuant to section 1062 of the Act. *See* 75 FR 57252–02, Sept. 20, 2010.

[3] Section 1061(a)(2) of the Act defines the terms ''transferor agency'' and ''transferor agencies'' to mean, respectively, ''(A) the Board of Governors (and any Federal Reserve Bank, as context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies, and (B) the agencies listed in subparagraph (A) collectively.''

[4] ''Enumerated consumer laws'' is defined in section 1002(12) of the Act and section 1400(b) of the Mortgage Reform and Anti-Predatory Lending Act, Tit. XIV, Public Law 111–203.

[5] These rules are listed as items 1 and 5 through 11 in section F (''Federal Trade Commission'') of the list below.

[6] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes this notice on behalf of the CFPB.

[7] Because publication of the list under section 1063(i) is not subject to the APA's notice-and-comment requirements, an initial regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

[8] Unless otherwise noted, all references to a Part include accompanying appendices and supplements.

respect to §§ 222.1(c) (effective dates), 222.83 (Disposal of consumer information), 222.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 222.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

8. 12 CFR Part 226—Truth in Lending (Regulation Z)

9. 12 CFR Part 230—Truth in Savings (Regulation DD)

B. Federal Deposit Insurance Corporation

1. 12 CFR Part 332—Privacy of Consumer Financial Information

2. 12 CFR Part 334—Fair Credit Reporting, except with respect to §§ 334.83 (Disposal of consumer information), 334.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 334.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

3. 12 CFR 365.101–.105 & Appendix A to Subpart B—Registration of Residential Mortgage Loan Originators

C. Office of the Comptroller of the Currency

1. 12 CFR 34.20–.25—Adjustable-Rate Mortgages (but only as applied to non-federally chartered housing creditors under the Alternative Mortgage Transaction Parity Act (''AMTPA''))

2. 12 CFR 34.101–.105 & Appendix A to Subpart F—Registration of Residential Mortgage Loan Originators

3. 12 CFR Part 40—Privacy of Consumer Financial Information

4. 12 CFR Part 41—Fair Credit Reporting, except with respect to §§ 41.83 (Disposal of consumer information), 41.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 41.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

D. Office of Thrift Supervision

1. 12 CFR 560.35—Adjustments to home loans (but only as applied to non-federally chartered housing creditors under AMTPA)

2. 12 CFR 560.210–220—Alternative Mortgage Transactions (but only as it relates to AMTPA)

3. 12 CFR 563.101–.105 & Appendix A to Subpart D—Registration of Residential Mortgage Loan Originators

4. 12 CFR Part 571—Fair Credit Reporting, except with respect to §§ 571.83 (Disposal of consumer information), 571.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 571.91 (Duties of card issuers regarding change of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

5. 12 CFR Part 573—Privacy of Consumer Financial Information

E. National Credit Union Administration

1. 12 CFR 701.21—Loans to members and lines of credit to members (but only as applied to non-federally chartered housing creditors under AMTPA)

2. 12 CFR Part 707—Truth in Savings

3. 12 CFR Part 716—Privacy of Consumer Financial Information

4. 12 CFR Part 717—Fair Credit Reporting, except with respect to §§ 717.83 (Disposal of consumer information), 717.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 717.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

5. 12 CFR Part 741—Requirements for Insurance, but only with respect to §§ 741.217 (Truth in savings), 741.220 (Privacy of consumer financial information), & 741.223 (Registration of residential mortgage loan originators)

6. 12 CFR Part 761—Registration of Mortgage Loan Originators

F. Federal Trade Commission

1. 16 CFR Part 310—Telemarketing Sales Rule

2. 16 CFR Part 313—Privacy of Consumer Financial Information

3. 16 CFR Part 320—Disclosure Requirements for Depository Institutions Lacking Federal Depository Insurance

4. 16 CFR Part 322—Mortgage Assistance Relief Services

5. 16 CFR Part 425—Use of Prenotification Negative Option Plans

6. 16 CFR Part 429—Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations

7. 16 CFR Part 433—Preservation of Consumers' Claims and Defenses

8. 16 CFR Part 444—Credit Practices

9. 16 CFR Part 435—Mail or Telephone Order Merchandise

10. 16 CFR Part 436—Disclosure Requirements and Prohibitions Concerning Franchising

11. 16 CFR Part 437—Disclosure Requirements and Prohibitions Concerning Business Opportunities

12. 16 CFR Subchapter F, Parts 603 *et seq.*—Fair Credit Reporting Act, except with respect to Part 681 (Identity Theft Rules), Part 682 (Disposal of Consumer Report Information and Records), & Appendix A to Part 681 (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

13. 16 CFR Part 901—Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act

G. Department of Housing and Urban Development

1. 24 CFR 26.28–.56—Hearing Procedures Pursuant to the Administrative Procedure Act

2. 24 CFR Part 30—Civil Money Penalties: Certain Prohibited Conduct (but only as applied to the Real Estate Settlement Procedures Act of 1974 (''RESPA'') and the Interstate Land Sales Full Disclosure Act (''ILSA''))

3. 24 CFR Part 1710—Land Registration

4. 24 CFR Part 1715—Purchasers' Revocation Rights, Sales Practices, and Standards

5. 24 CFR Part 1720—Formal Procedures and Rules of Practice

6. 24 CFR Part 3500—Real Estate Settlement Procedures Act

7. 24 CFR Part 3800—Investigations in Consumer Regulatory Programs (but only as applied to RESPA and ILSA)

Dated: May 23, 2011.

Rebecca Ewing,

Acting Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2011–13256 Filed 5–27–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM451; Special Conditions No. 25–426–SC]

Special Conditions: Bombardier Model BD–700–1A10 and BD–700–1A11 Airplanes, Head-up Display (HUD) With Video Synthetic Vision System (SVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes. These airplanes, as modified by Bombardier Inc., will have a novel or unusual design feature associated with a SVS that displays video imagery on

the HUD. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–2239 facsimile (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2007, Transport Canada Civil Aviation (TCCA), on behalf of Bombardier Inc., located in Montreal, Canada, applied to the New York Aircraft Certification Office (NYACO) for FAA approval of a type-design change on the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes. Per Type Certificate Data Sheet (TCDS) T00003NY, those aircraft models are known under the marketing designation of Global Express and Global 5000, respectively. The change is to introduce the Rockwell-Collins avionics suite to replace the existing Honeywell Primus 2000EP avionics suite. The change includes the installation of a SVS that displays video imagery.

Video display on the HUD constitutes new and novel technology for which the FAA has no certification criteria. Title 14, Code of Federal Regulations (14 CFR) 25.773 does not permit visual distortions and reflections that could interfere with the pilot's normal duties and was not written in anticipation of such technology. Other applications for certification of such technology are anticipated in the near future and magnify the need to establish FAA safety standards that can be applied consistently for all such approvals. Special conditions are therefore issued as prescribed under the provisions of § 21.16.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Bombardier Inc. must show that the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in T00003NY or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in T00003NY are as follows:

Based on the application date, January 26, 2007, under the provisions of § 21.101, the applicable type-certification standards for the modification to the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes are as follows:

Airworthiness & Environmental Standards for Components and Areas Not Affected by the Change

The original certification basis for the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes shown on TCDS T00003NY, Revision 13.

Airworthiness and Environmental Standards for Components and Areas Affected by the Change

14 CFR part 25, effective February 1, 1965, including the latest applicable requirements of Amendments 25–1 through 25–119.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under 14 CFR 21.101.

Novel or Unusual Design Features

The Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes will incorporate the following novel or unusual design features:

An SVS that displays video imagery on a HUD.

Discussion

For many years the FAA has approved, on transport category airplanes, the use of HUD that display flight symbology, without a significant visual obscuration of the outside view. When the FAA began to evaluate the display of enhanced vision system (EVS) imagery on the HUD, significant potential to obscure the outside view became apparent, contrary to the requirements of 14 CFR 25.773. This rule does not permit distortions and reflections in the pilot-compartment view that can interfere with normal duties, and the rule was not written in anticipation of such technology. The video image potentially interferes with the pilot's ability to see the natural scene in the center of the forward field of view. Therefore, the FAA issued special conditions for such HUD/EVS installations to ensure that the level of safety required by § 25.773 would be met even when the image might partially obscure the outside view. While many of the characteristics of EVS and SVS video differ in some ways, they have one thing in common: The potential for interference with the outside view through the airplane windshield. The FAA issues special conditions for new and novel technologies to achieve equivalent levels of safety.

Although the pilot readily may be able to see around and through small, individual, stroke-written symbols on the HUD, the pilot may not be able to see around or through the image that fills the display without some interference of the outside view. Nevertheless, the SVS may be capable of meeting the required level of safety when considering the combined view of the image and the outside scene visible to the pilot through the image. It is essential that the pilot can use this combination of image and natural view of the outside scene as safely and effectively as the pilot-compartment view currently available without the SVS image.

Because § 25.773 does not provide for any alternatives or considerations for such a new and novel system, the FAA establishes safety requirements that assure an equivalent level of safety and effectiveness of the pilot-compartment view as intended by that rule. The purpose of this special condition is to provide the unique pilot-compartment-view requirements for the SVS installation.

Discussion of Comments

Notice of Proposed Special Conditions no. 25–11–10–SC for the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes was published in the Federal Register on March 28, 2011 (76 FR 17062). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes.

1. During any phase of flight in which it is to be used, the SVS imagery on the HUD must not degrade flight safety or interfere with the effective use of outside visual references for required pilot tasks.

2. To avoid unacceptable interference with the safe and effective use of the pilot-compartment view, the SVS must meet the following requirements:

a. The SVS design must minimize unacceptable display characteristics or artifacts (e.g., terrain shadowing against a dark background) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of SVS image display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to avoid pilot distraction, impairment of the pilot's ability to detect and identify visual references, masking of flight hazards, or to otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single, manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (e.g., low-visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the SVS image on demand, without having to remove hands from the flight controls and throttles.

d. The SVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual-attitude recovery cues.

e. The SVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (i.e., conformal) to the external scene. In addition, the SVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. Airplane attitudes or cross-wind conditions may cause certain symbols (e.g., the zero-pitch line or flight-path vector) to reach field-of-view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance that makes the pilot aware that they are no longer displayed conformally (for example, ''ghosting''). The combined use of symbology and runway image may not be used for path monitoring when path symbology is no longer conformal.

f. A HUD system used to display SVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot-compartment view must be not be degraded by the display of the SVS image. These tasks include the following:

a. Detection, accurate identification and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other flight hazards.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of the SVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on May 20, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13341 Filed 5–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No.: EOUST 103]

RIN 1105–AB16

Procedures Governing Administrative Review of a United States Trustee's Decision To Deny a Chapter 12 or Chapter 13 Standing Trustee's Claim of Actual, Necessary Expenses

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Final rule.

SUMMARY: This final rule (''rule'') sets forth the procedures for a chapter 12 or chapter 13 standing trustee (''trustee'') to obtain administrative review of a United States Trustee's decision to deny a trustee's claim that certain expenses are actual and necessary for the administration of bankruptcy cases. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (''BAPCPA'') requires that trustees exhaust all administrative remedies pertaining to a denial of a claim of actual, necessary expenses before seeking judicial review, and the Attorney General prescribe procedures for administrative review of such denials. This rule ensures that the process for administratively reviewing a United States Trustee's denial of a trustee's request for expenses is fair and effective.

DATES: *Effective Date:* This rule is effective June 30, 2011.

ADDRESSES: Executive Office for United States Trustees (''EOUST''), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Ramona D. Elliott, General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 14, 2009, at 74 FR 41,101, EOUST

published a proposed rule on this topic. Before the comment period closed on October 13, 2009, EOUST received two comments. The comments received and EOUST's responses are discussed below.

Discussion

The administration of all chapter 12 and chapter 13 bankruptcy cases is entrusted to private persons who are case or standing trustees under the supervision and oversight of a regional United States Trustee. As distinguished from case or standing trustees, United States Trustees are employees of the Department of Justice. A standing trustee is appointed by the United States Trustee under 28 U.S.C. 586 and administers more than one chapter 12 or chapter 13 case, as opposed to a case trustee who is appointed under 11 U.S.C. 1202 or 11 U.S.C. 1302 and who administers only the case to which the trustee is appointed. This rule addresses the right, conferred by the BAPCPA, of a standing trustee to obtain administrative review when the trustee's request for projected expenses, referred to as a ''claim of actual, necessary expenses'' in 28 U.S.C. 586(e)(3), is denied by the United States Trustee.

When a debtor files for bankruptcy relief under chapter 12 or chapter 13, the debtor proposes a plan to pay his or her creditors a percentage of the amounts owed to creditors over a specified period of time and obtains court approval of this plan. This process is termed confirming a chapter 12 or chapter 13 plan. Once the bankruptcy court confirms the plan, the trustee will oversee the payment of creditors pursuant to the plan. The debtor pays plan payments to the trustee and the trustee then disburses the appropriate amounts to creditors.

As part of the process of administering debtors' cases, a trustee incurs expenses. A trustee is authorized to collect a specified percentage from debtors' plan payments to pay for these expenses. However, before incurring expenses, a trustee obtains approval from the United States Trustee. As the first step in obtaining United States Trustee approval for expenses, the United States Trustee requires that the trustee submit a budget for the anticipated expenses for the fiscal year. The fiscal year for the chapter 12 standing trustee ends each June 30th; the fiscal year for the chapter 13 standing trustee ends each September 30th. Next, these projected expenses are evaluated by the United States Trustee who will either approve the expenses or require modifications to the proposed budget. Once the United States Trustee approves the trustee's budget, the trustee is notified of this approval, and pursuant to 28 U.S.C. 586(e), the trustee's compensation and a specified percentage fee that the trustee may collect from debtors' plan payments are authorized. This fee is to be used for payment of the approved expenses incurred during the fiscal year as well as for the trustee's compensation.

When a trustee realizes that expenses for the current year might exceed the approved amount, a trustee must submit a request to the United States Trustee, and obtain approval, before incurring expenses above the approved amount. This request must be submitted when the increase to an individual expense line item is greater than both 10% of the budgeted amount and $5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount. These expenses currently are increases in the amount budgeted for specified employee expenses, increases in office lease obligations, payments to the standing trustee or relative of the standing trustee, and expenses for any item not originally contained in the approved budget. This policy is set forth in the Handbook for Chapter 13 Standing Trustees which is posted on the EOUST's Web site and will be incorporated in the revised Handbook for Chapter 12 Standing Trustees. If any other expenses are added to this list, the United States Trustee will notify trustees via e-mail or regular mail at least 30 days before including the new expenses in a revision to the Handbook.

If a trustee disagrees with the United States Trustee's denial of the trustee's proposed budget or request for additional expenses, the trustee may seek administrative review of the denial under the procedures identified in this rule. The Director of EOUST (''Director'') will conduct a de novo review of the United States Trustee's decision to determine whether the record supports the United States Trustee's decision and whether the decision was an appropriate exercise of the United States Trustee's discretion or contrary to law.

With the passage of BAPCPA, Congress directed the Attorney General to prescribe procedures implementing administrative review for trustees when a claim of actual, necessary expenses is denied. The Attorney General delegated this authority to the Director. In response to this congressional mandate, the Director publishes this rule, which establishes such procedures. This rule imposes requirements only upon standing trustees who are supervised by United States Trustees. In addition, this rule addresses only the United States Trustee's denial of a trustee's claim of actual, necessary expenses. This rule does not address the suspension or termination of trustees. EOUST will publish another notice of proposed rulemaking that addresses the suspension or termination of trustees with a RIN number of 1105–AB12.

Summary of Changes in Final Rule

The final rule differs from the proposed rule in the following ways:

- The administrative review process has been expedited by shortening the time for a trustee to request review by the Director from 30 calendar days to 21 calendar days after receiving a notice of denial of expenses from the United States Trustee or after the expenses were deemed denied. Similarly, the United States Trustee's time to respond to the trustee's request for review has been shortened from 30 calendar days to 21 calendar days. These changes are reflected in paragraphs (e) and (h).
- Paragraphs (c)(1), (c)(2), and (k) have been revised to eliminate the reference to ''the deadline'' so that the review process cannot arbitrarily be delayed by setting long deadlines when the United States Trustee or the Director seeks the submission of additional information.
- Paragraph (i) has been revised to include the word ''non-privileged'' before ''information'' in order to make it consistent with paragraph (d) and so that it is clear that the rule does not seek to waive a trustee's right to assert traditional privileges.
- The rule has been revised to reflect differences in chapter 12 and chapter 13 fiscal years.

Discussion of Public Comments

EOUST received two comments on the proposed rule, one of which had several sub-comments within it. EOUST has considered each comment carefully and appreciates the time and effort required to prepare and submit each comment. EOUST's responses to the comments are discussed below.

1. Deadlines—Expediting the Administrative Review Process

Comment: One comment expressed concern that the time limits in the rule allowed too much time to elapse before a final decision by the Director must be issued. The comment suggested shortening the deadlines for various stages during the administrative review process. Specifically, the comment recommended the United States Trustee deny a budget line item no later than October 10, the trustee appeal within 15

days, the United States Trustee respond within 10 days, and the Director issue a decision within 90 days of the trustee's request for review.

Response: EOUST recognizes that the administrative review process can be lengthy at times and has revised the rule to shorten the process as much as possible. However, sufficient time must be granted to the trustee, United States Trustee, and the Director to perform their respective duties to ensure a fair and just resolution is accomplished. In order to balance the competing interests of a quick resolution with that of obtaining the most equitable resolution that is fair to all parties, EOUST has modified some of the deadlines in the rule. Although the comment did not reference the time line for the chapter 12 trustee, the same concern would exist. Specifically, the time for a trustee to request review by the Director is shortened from 30 calendar days to 21 calendar days from the date of the United States Trustee's notice of denial or 21 calendar days from the date on which the trustee's expenses were deemed denied by the United States Trustee. Similarly, the United States Trustee's deadline for responding to the trustee's request for review has been shortened from 30 calendar days to 21 calendar days.

EOUST has not, however, modified the deadline for the United States Trustee to issue a denial of a trustee's requested expenses—July 30 for chapter 12 standing trustee expenses and October 31 for chapter 13 standing trustee expenses. Though trustees are generally required to submit a budget delineating the trustee's expenses by May 1 for chapter 12 trustees and July 1 for chapter 13 trustees, this is not always the case in every region, and many trustees submit budgets after the due date. In addition, it is not an infrequent occurrence for a chapter 12 trustee to submit a budget after June 1 or a chapter 13 trustee to submit a budget after September 1. When this occurs, the United States Trustee must have sufficient time to thoroughly review the trustee's proposed expenses. Thus, in order to ensure the United States Trustee has adequate time to review every trustee's expenses, including those submitted late, EOUST declines to modify the rule to require the United States Trustee to issue a denial by July 10 for chapter 12 trustees and by October 10 for chapter 13 trustees.

2. Deadlines—Eliminating Delays for Submission of Additional Information

Comment: One comment pointed out that the language in the rule could significantly extend the time limits for reaching a resolution. In paragraphs (c)(1), (c)(2), and (k), the rule states that if the United States Trustee or the Director seeks additional information, the time period for resolution or denial is extended to 30 days beyond ''the deadline for submission of the additional information.'' The comment stated this could be read to allow the United States Trustee or the Director to set a long deadline for the submission of additional information, and thereby delay the review process.

Response: EOUST concurs that these paragraphs could be interpreted as the comment indicated, though that was not the intent. Accordingly, EOUST has modified paragraphs (c)(1), (c)(2), and (k) to eliminate the reference to ''the deadline'' so that the review process continues upon the submission of the additional information and cannot arbitrarily be delayed by setting long deadlines for the submission of that additional information.

3. Denying Expenses—Adding ''Good Cause'' Justification

Comment: One comment acknowledged that the rule does not require the United States Trustee to deny a trustee's claim for expenses when a trustee commits one of the reasons for denial as enunciated in paragraphs (b)(1) through (7), and that the United States Trustee possesses discretion to determine whether denial is appropriate. However, the comment advocated that the rule should include a ''good cause'' provision so that the United States Trustee may deny the trustee's claim for expenses only if the trustee's failure is without ''good cause.''

Response: This change is unnecessary and could potentially transfer the burden of proof from the trustee to the United States Trustee when adjudicating a trustee's request for review. As the comment concedes, the rule does not eliminate the United States Trustee's discretion to approve or deny a trustee's claim for expenses.

The rule was intentionally drafted this way to provide the United States Trustee with sufficient flexibility to approve expenses, in appropriate circumstances, even when a trustee engages in one of the enumerated reasons for denial. EOUST agrees that the rule must have sufficient flexibility to account for special circumstances, such as the inability to obtain prior approval of an expense due to a flood or other natural disaster, which is precisely why the rule provides the United States Trustee with discretion. In addition, the rule requires the United States Trustee to communicate with the trustee in an attempt to resolve any dispute before issuing a notice of denial. Thus, the trustee will have ample opportunity to explain any reason or ''good cause'' to the United States Trustee, necessitating the immediate expenditures and which prevented the trustee from obtaining prior approval of such expenses.

As the rule is currently written, the United States Trustee possesses the discretion to deny a trustee's claim for expenses if the trustee engages in one of the delineated reasons for denial (or some similar reason). If an emergency situation caused the trustee to commit one of these failures, then the trustee can explain the emergency to the United States Trustee who may then decide that the claim for expenses may be approved. Or, if the United States Trustee feels the emergency did not warrant the trustee's failure, then the claim for expenses may be denied.

If the United States Trustee denies the claim for expenses, then the trustee may request the Director to review the United States Trustee's decision, and may present the emergency situation to the Director as a justifiable reason or ''good cause.''

The crucial point is that the trustee has the opportunity to explain why an emergency situation caused the trustee's failure and the United States Trustee has the flexibility under the rule to approve or disapprove depending on what is most appropriate in the individual circumstances. Because the rule provides sufficient flexibility for emergency situations as written, there is no need to create a ''good cause'' provision. Moreover, the addition of a ''good cause'' exception may inappropriately require the United States Trustee to prove that the ''good cause'' was insufficient to justify the trustee's failure before denying a claim for expenses, effectively transferring the burden of proving whether a trustee's failure was justified from the trustee to the United States Trustee. EOUST believes the trustee should bear the burden of proof in demonstrating whether a sufficient reason exists for excusing the trustee's failure. Accordingly, EOUST declines to modify the rule as proposed by the comment.

4. Privileged Documents

Comment: One comment pointed out that paragraph (d) requires the United States Trustee to provide ''non-privileged'' documents to the Director while paragraph (i) allows the Director to seek ''additional information from any party.'' The comment expressed concern that the asymmetry between

these two paragraphs could mean that the rule intends to waive the trustee's right to assert traditional privileges.

Response: The asymmetry between the two paragraphs is inadvertent. EOUST is not attempting to waive a trustee's right to assert traditional privileges. Paragraph (i) is revised to include ''non-privileged'' before ''information.''

5. Percentage Fees

Comment: One comment proposed striking the language stating that this rule does not authorize a trustee to seek review of any decision to change the trustee's percentage fee, concluding that the review of expenses without the review of the percentage fee is meaningless.

Response: The setting of the trustee's percentage fee and the allowance or disallowance of expenses, though related, are not inextricably tied together. Though the amount of a trustee's expenses is one factor in determining the trustee's percentage fee, it is not the only factor. A change in the level of expenses may or may not necessitate a change in a trustee's percentage fee. Further, 28 U.S.C. 586(e)(3) specifically requires the Attorney General to develop procedures for a standing trustee to obtain administrative review of the United States Trustee's decision to deny the trustee's claim for actual, necessary expenses. It is important to note that this right to review is expressly limited to the denial of a claim for expenses, not the setting of the trustee's percentage fee. In order to maintain the scope of review mandated by Congress, EOUST declines to modify the rule as requested by the comment.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), The Principles of Regulation. This rule is not a ''significant regulatory action'' as defined by Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the costs for prosecuting an administrative appeal of the United States Trustee's denial of a trustee's claim of actual, necessary expenses. The anticipated costs are the compiling, photocopying and mailing of the requested records. However, none of these costs are new. This rule simply codifies the current practice for obtaining administrative review of the United States Trustee's decision.

The benefits of this rule include the codification of the process for a trustee to obtain administrative review of the United States Trustee's denial of a trustee's claim of actual, necessary expenses. These benefits justify its costs in complying with Congress' mandate to prescribe procedures to implement 28 U.S.C. 586(e)(3).

Executive Order 13132

This rule will 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule does not contain an information collection under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). If a trustee wishes to appeal the United States Trustee's decision, the trustee submits a request for review to the Director detailing the specific factual circumstances supporting the trustee's argument.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that this rule does not impose any new costs upon trustees that did not already exist under the current administrative review process. In addition, the costs of compiling, photocopying and mailing records are de minimis.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the annual expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). 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 rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

■ 1. The authority citation for Part 58 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

■ 2. Add § 58.11 to read as follows:

§ 58.11 Procedures governing administrative review of a United States Trustee's decision to deny a Chapter 12 or Chapter 13 standing Trustee's claim of actual, necessary expenses.

(a) The following definitions apply to this section. These terms shall have these meanings:

(1) The term *claim of actual, necessary expenses* means the request by a chapter 12 or chapter 13 standing trustee for the United States Trustee's approval of the trustee's projected expenses for each fiscal year budget, or for an amendment to the current budget when an increase in an individual expense line item is greater than both 10% of the budgeted amount and $5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount;

(2) The term *director* means the person designated or acting as the Director of the Executive Office for United States Trustees;

(3) The term *final decision* means the written determination issued by the Director based upon the review of the United States Trustee's decision to deny all or part of a trustee's claim of actual, necessary expenses;

(4) The term *notice* means the written communication from the United States Trustee to a trustee that the trustee's claim of actual, necessary expenses has been denied in whole or in part;

(5) The term *request for review* means the written communication from a trustee to the Director seeking review of the United States Trustee's decision to deny, in whole or in part, the trustee's claim of actual, necessary expenses;

(6) The term *trustee* means an individual appointed by the United States Trustee under 28 U.S.C. 586(b) to serve as the standing trustee for chapter 12 or chapter 13 cases in a particular region; and

(7) The term *United States Trustee* means, alternatively:

(i) A United States Trustee appointed under 28 U.S.C. 581; or

(ii) A person acting as a United States Trustee under 28 U.S.C. 585.

(b) The United States Trustee may issue a decision to deny a trustee's claim of actual, necessary expenses. Reasons for denial include, but are not limited to, finding that the trustee failed to do any of the following:

(1) Provide to the United States Trustee sufficient justification for the expense;

(2) Demonstrate to the United States Trustee that the expense is a cost effective use of funds;

(3) Demonstrate to the United States Trustee that the expense is reasonably related to the duties of the trustee;

(4) Obtain authorization from the United States Trustee prior to making an expenditure that was not provided for in the current budget;

(5) Provide the United States Trustee with documents, materials, or other information pertaining to the expense;

(6) Timely submit to the United States Trustee accurate budgets or requests for amendment of budgets to cover the additional expense; or

(7) Demonstrate to the United States Trustee that the expense is directly related to office operations.

(c) Before issuing a notice of denial, the United States Trustee shall communicate in writing with the trustee in an attempt to resolve any dispute over a claim of actual, necessary expenses:

(1) For disputes involving the trustee's projected expenses for the upcoming fiscal year budget, the United States Trustee shall either resolve the dispute or issue a notice of denial no later than July 30 of the current calendar year for a chapter 12 standing trustee or October 31 of the current calendar year for a chapter 13 standing trustee, or if the United States Trustee has requested additional information, 30 calendar days from submission of the additional information if such submission is after July 1 for a chapter 12 standing trustee or October 1 for a chapter 13 standing trustee, unless the trustee and United States Trustee agree to a longer period of time. Any projected expenses not specifically disputed shall be approved in the ordinary course and the trustee's fee shall be set on an interim basis;

(2) For disputes over amendments to the current year budget, the United States Trustee shall either resolve the dispute or issue a notice of denial no later than 30 calendar days after the trustee's amendment request, or if the United States Trustee has requested additional information, 30 calendar days from submission of the additional information, unless the trustee and the United States Trustee agree to a longer period of time. Any portion of the amendment not specifically disputed shall be approved in the ordinary course;

(3) If the United States Trustee does not resolve the dispute or issue a notice of denial within the time frames identified in (c)(1) or (2) of this section, the trustee's claim of actual, necessary expenses shall be deemed denied on the next business day following expiration of the time frames identified in (c)(1) or (2) of this section.

(d) The United States Trustee shall notify a trustee in writing of any decision denying a trustee's claim of actual, necessary expenses. The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the decision. The United States Trustee shall provide to the trustee copies of any such non-privileged documents that were not supplied to the United States Trustee by the trustee. The notice shall be sent to the trustee by overnight courier, for delivery the next business day.

(e) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director no later than 21 calendar days from the date of the notice to the trustee. If the United States Trustee did not issue a notice of denial, and the expenses were deemed denied under (c)(3) of this section, the trustee shall have 21 calendar days from the date on which the expenses were deemed denied to submit a request for review to the Director.

(f) The decision to deny a trustee's claim of actual, necessary expenses shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final decision by the Director.

(g) The trustee's request for review shall be in writing and shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials the trustee wants the Director to consider in reviewing the United States Trustee's decision. The trustee shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the trustee or the date the expenses were deemed denied. The trustee shall also send a copy of the request for review to the United States Trustee by overnight courier, for delivery the next business day.

(h) The United States Trustee shall have 21 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee by overnight courier, for delivery the next business day.

(i) The Director may seek additional non-privileged information from any party, in the manner and to the extent the Director deems appropriate.

(j) In reviewing the decision to deny a trustee's claim of actual, necessary expenses, the Director shall determine:

(1) Whether the decision is supported by the record; and

(2) Whether the decision constitutes an appropriate exercise of discretion.

(k) The Director shall issue a final decision no later than 90 calendar days from the receipt of the trustee's request for review, or, if the Director has requested additional information, 30 calendar days from submission of the additional information, unless the trustee agrees to a longer period of time. The Director's final decision on the trustee's request for review shall constitute final agency action.

(l) In reaching a final decision the Director may specify a person to act as a reviewing official. The reviewing official may not be under the supervision of the United States Trustee who denied the trustee's claim of actual, necessary expenses. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director

with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(m) This rule does not authorize a trustee to seek review of any decision to change maximum annual compensation, to decrease or increase appointments of trustees in a region or district, to change the trustee's percentage fee, or to suspend, terminate, or remove a trustee.

(n) A trustee must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: May 12, 2011.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. 2011–12187 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 161

[Docket No. USCG–1998–4399]

RIN 1625–AA58

Vessel Traffic Service Lower Mississippi River; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The United States Coast Guard published a final rule in the **Federal Register** on October 28, 2010 (75 FR 66309) establishing a mandatory participation Vessel Traffic Service (VTS) on the Lower Mississippi River and transferring certain vessel traffic management provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. That document inadvertently transposed the coordinates for two of the reporting points for the Algiers Point Special Area.

DATES: Effective on May 31, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this correcting amendment or the corresponding rule, call or e-mail Lieutenant Commander Jim Larson, Office of Shore Forces (CG–7413), Coast Guard; telephone 202–372–1554, e-mail *James.W.Larson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: This amendment corrects a previously printed error in the final rule that mistakenly transposed geographic coordinates for the Algiers Canal Forebay and Huey P Long Bridge reporting points in Table 161.65(f), VTS Lower Mississippi River Reporting Points.

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, 33 CFR part 161 is corrected by making the following correcting amendment:

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 161.65, revise Table 161.65(f) to read as follows:

§ 161.65 Vessel Traffic Service Lower Mississippi River.

* * * * *

(f) * * *

TABLE 161.65(f)—VTS LOWER MISSISSIPPI RIVER REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude/mile marker	Notes
A	Algiers Canal Forebay	88.0 AHP	29°55.40′ N; 89°57.7′ W	Upbound transiting Algiers Point Special Area.
B	Industrial Canal	92.7 AHP	29°57.2′ N; 90°01.68′ W	Upbound transiting Algiers Point Special Area.
C	Crescent Towing Smith Fleet.	93.5 AHP	29°57.50′ N; 90°02.62′ W	Upbound Towing vessels transiting Algiers Point Special Area.
D	Marlex Terminal (Naval Ships).	99.0 AHP	29°54.65′ N; 90°05.87′ W	Downbound transiting Algiers Point Special Area.
E	Huey P Long Bridge	106.1 AHP	29°56.6′ N; 90°10.1′ W	Downbound transiting Algiers Point Special Area.

Dated: May 24, 2011.

Kathryn A. Sinniger,

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

[FR Doc. 2011–13332 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0375]

RIN 1625–AA00

Safety Zone; M.I.T.'s 150th Birthday Celebration Fireworks, Charles River, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Sector Boston Captain of the Port (COTP) Zone for the M.I.T.'s 150th Birthday Celebration Fireworks display. This safety zone is necessary to provide for the safety of life on navigable waters during the fireworks event. Entering into, transiting through, mooring or anchoring within this zone is prohibited unless authorized by the COTP or the designated on-scene representative.

DATES: This rule is effective and will be enforced from 9 p.m. to 10 p.m. on June 4, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0375 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0375 in the ''Keyword''

box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 David Labadie of the Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617–223–3010, e-mail *david.j.labadie@uscg.mil.* If you have questions on viewing material related to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information regarding the dates and scope of the event was not received in time to publish a NPRM followed by a final rule as the event would occur before the rulemaking process was complete. Due to the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose spectators, vessels and other property to the hazards associated with pyrotechnics used in the fireworks display.

Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1226, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

The safety zone is being issued to establish a temporary regulated area on the Charles River around the fireworks launch barge during the fireworks display.

Discussion of Rule

This temporary rule is necessary to ensure the safety of spectators, vessels and other property from the hazards associated with fireworks display. The COTP Boston has determined that fireworks displays in close proximity to watercraft and waterfront structures pose a significant risk to public safety and property. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone around the location of this fireworks event will help ensure the safety of spectators, vessels and other property and help minimize the associated risks.

The Coast Guard has implemented safety zones for past events and has not received public comments or concerns regarding the impact to waterway traffic from these events.

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.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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 determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration, is located in waterways that have no deep draft commercial traffic and is designed to avoid, to the extent possible, fishing and recreational boating traffic routes.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, moor or anchor in portions of the Charles River during a fireworks display.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for 1 hour and vessels will be able to transit around the safety zone. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MST1 David Labadie at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0375 to read as follows:

§ 165.T01–0375 Safety Zone; M.I.T.'s 150th Birthday Celebration Fireworks, Charles River, Boston, Massachusetts

(a) *General.* A temporary safety zone is established for the fireworks display as follows:

(1) *Location.* All waters of the Charles River, from surface to bottom, within a 250-yard radius of position 42°21.20′ N; 071°05.15′ W. This position is located in the middle of the Charles River, east of Massachusetts Ave.

(2) *Enforcement period.* This rule is effective and will be enforced from 9 p.m. to 10 p.m. on June 4, 2011.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entering into, transiting through, mooring or anchoring within this regulated area is prohibited unless authorized by the Captain of the Port (COTP) Boston, or the designated on-scene representative.

(2) The ''on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP Boston to act on his behalf. The on-scene representative will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–5750 (Sector Boston command center) to obtain permission to do so.

(4) Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port or the designated on-scene representative.

Dated: May 16, 2011.

John N. Healey,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2011–13322 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1091]

RIN 1625–AA00

Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone within the waters of Gravesend Bay, Brooklyn, New York. This safety zone is necessary to provide for the protection of the maritime public and safety of navigation from recently discovered underwater explosive hazards in Gravesend Bay. This action will restrict unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of Gravesend Bay until recently discovered military munitions are rendered safe and removed from the area. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) New York or the designated on-scene representative.

DATES: This rule is effective on June 30, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–1091 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1091 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 LTJG Eunice James, Coast Guard; telephone (718) 354–4163, e-mail *Eunice.A.James@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 8, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY'' in the **Federal Register** (76 FR 6728). We received no comments on the proposed rule. A public meeting was not requested and none was held.

Basis and Purpose

In response to media reports of military munitions found in Gravesend Bay by civilian divers, U.S. Navy Explosive Ordnance Disposal divers from Naval Weapons Station Earle conducted underwater surveys and confirmed the location of munitions on the bottom of Gravesend Bay. The munitions consist of approximately 1500 rounds of 20mm ammunition, one 3-inch diameter projectile and two cartridge casings. The (COTP) New York has established a temporary safety zone under docket number USCG–2010–1126 as an interim measure while this long-term rulemaking process is pursued.

In the interest of public safety, the U.S. Navy has requested that the Coast Guard limit access to the location in Gravesend Bay where the munitions are located until the ordnance can be rendered safe and removed.

This safety zone is necessary to ensure the safety of mariners, vessels, and civilian divers from the potential hazards associated with unexploded military munitions.

Background

The COTP New York is establishing a safety zone around the location of an unexploded munitions site to ensure the safety of mariners and vessels transiting near the location of the ordnance as well as divers intending to dive in the area.

The safety zone encompasses all waters of Gravesend Bay within 110-yard radius of position 40°36′30″ N, 074°02′14″ W (NAD 83), approximately 70-yards southeast of the Verrazano Bridge Brooklyn tower.

Entry into the safety zone by any person or vessel will be prohibited unless specifically authorized by the COTP New York, or the designated on-scene representative. Persons desiring to enter the safety zone may request permission to enter from the Coast Guard COTP via VHF Channel 16 or by contacting the Sector New York Command Center at (718) 354–4353.

The Coast Guard advises that entry into, transiting, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring in this safety zone is prohibited unless authorized by the COTP New York or the designated on-scene representative.

The ''designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP New York to act on her behalf.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rulemaking. No changes were made to the final rule.

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.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending entering into, transiting through, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring in a portion of Gravesend Bay.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will limit access to a relatively small portion of the waterway. Vessel traffic can safely transit around the safety zone. Before the activation of the zone, we will issue maritime advisories widely available to users of the waterway in the vicinity of Gravesend Bay.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone to restrict unauthorized persons and vessels from entering into, transiting through, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring within a portion of Gravesend Bay until recently discovered military munitions are rendered safe and removed from the area.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.172 to read as follows:

§ 165.172 Safety Zone; Underwater Hazard, Gravesend Bay, Brooklyn, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Gravesend Bay within a 110-yard radius

of a point in position 40°36′30″ N, 074°02′14″ W (NAD 83), approximately 70-yards southeast of the Verrazano Bridge Brooklyn tower.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) Entering into, transiting through, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) New York or the designated on-scene representative.

(3) The ''designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP New York.

(4) Vessel operators desiring to enter or operate within the safety zone may contact the COTP New York or the designated representative at the Coast Guard Sector New York Command Center via VHF Channel 16 or by phone at (718) 354–4353 to request permission.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP New York or the on-scene representative.

Dated: May 11, 2011.

L.L. Fagan,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2011–13325 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0391]

RIN 1625–AA00

Safety Zone; Ocean City Air Show, Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on the Atlantic Ocean in the vicinity of Ocean City, MD to support the Ocean City Air Show. This action is necessary to provide for the safety of life on navigable waters during the Ocean City Air Show. This action is intended to restrict vessel traffic movement on the Atlantic Ocean to protect mariners from the hazards associated with air show events.

DATES: This rule is effective from 10 a.m. on June 10, 2011, until 4 p.m. on June 12, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0391 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0391 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Michael DiPace, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Michael.S.DiPace@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that on June 10, 11, and 12, 2011, Ocean City, MD will host an air show event above the Atlantic Ocean between Talbot Street and 33rd Street in Ocean City, MD. In recent years, there have been unfortunate instances of jet and plane crashes during performances at air shows. Typical of jet or plane crashes, there is also a wide area of scattered debris that damages property and could cause significant injury or death. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard is establishing a temporary safety zone bound by the following coordinates: 38°21′38″ N/075°04′04″ W, 38°21′27″ N/075°03′29″ W, 38°19′35″ N/075°04′19″ W, 38°19′45″ N/075°04′54″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Ocean bound by the following coordinates: 38°21′38″ N/075°04′04″ W, 38°21′27″ N/075°03′29″ W, 38°19′35″ N/075°04′19″ W, 38°19′45″ N/075°04′54″ W (NAD 1983), in the vicinity of Talbot Street and 33rd Street in Ocean City, MD.

This safety zone is in the interest of public safety during the Ocean City Air Show and will be enforced from 10 a.m. until 4 p.m. on June 10, 2011, from 10 a.m. until 4 p.m. on June 11, 2011, and from 10 a.m. until 4 p.m. on June 12, 2011. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

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. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of

limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on the Atlantic Ocean in the vicinity of Ocean City, MD from 10 a.m. until 4 p.m. on June 10, 2011, from 10 a.m. until 4 p.m. on June 11, 2011, and from 10 a.m. until 4 p.m. on June 12, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration and limited size. (ii) Before the enforcement period of June 10, 2011 to June 12, 2011, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a

category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add Temporary § 165.T05–0391, to read as follows:

§ 165.T05–0391 Safety Zone; Ocean City Air Show, Atlantic Ocean, Ocean City, MD

(a) *Regulated area.* The following area is a safety zone: Specified waters of the Atlantic Ocean bound by the following coordinates: 38°21′38″ N/075°04′04″ W, 38°21′27″ N/075°03′29″ W, 38°19′35″ N/075°04′19″ W, 38°19′45″ N/075°04′54″ W (NAD 1983), in the vicinity of Ocean City, Maryland.

(b) *Definition:* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period.* This rule will be enforced from 10 a.m. until 4 p.m. on June 10, 2011, from 10 a.m. until 4 p.m. on June 11, 2011, and from 10 a.m. until 4 p.m. on June 12, 2011.

Dated: May 16, 2011.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2011–13329 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–1082; FRL–9313–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment for the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a final determination that the Pittsburgh-Beaver Valley 8-hour ozone nonattainment area (the Pittsburgh Area) has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring period. Complete, quality-assured air monitoring data available for 2010 in EPA's Air Quality System (AQS) are consistent with continued attainment. In accordance with EPA's applicable ozone implementation rule, this determination suspends the obligation of the Commonwealth of Pennsylvania to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area for as long as the nonattainment area continues to meet the 1997 8-hour ozone NAAQS. This determination of attainment is not equivalent to a redesignation to attainment. The State must still meet the statutory requirements for redesignation in order to be redesignated to attainment. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on June 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–1082. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 7, 2011 (76 FR 6590), EPA published a notice of proposed rulemaking (NPR), proposing to determine that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS. The Pittsburgh Area is composed of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties in Pennsylvania. EPA's determination is based upon complete, quality-assured, quality-controlled, and certified ambient air quality monitoring data for the years 2007 to 2009 showing that the Pittsburgh Area has monitored attainment of the 1997 8-hour ozone NAAQS. Complete air quality monitoring data for 2010 in AQS also show continued attainment.

II. Summary of Action

EPA is determining that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS based on 2007 to 2009 complete, quality-assured, and certified ambient air quality monitoring data. Data for 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, a final determination of

attainment suspends the requirement for the Commonwealth of Pennsylvania to submit, for the Pittsburgh Area, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS as long as the area continues to attain the 1997 8-hour ozone NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking, that the Pittsburgh Area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.918, would no longer exist, and the Pittsburgh Area would thereafter have to address applicable requirements.

This action is not a redesignation of the area to attainment. The Pittsburgh Area will remain designated nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

Other specific information regarding this determination and the rationale for EPA's proposed action are explained in the NPR, and will not be restated here.

III. Summary of Public Comments and EPA Responses

On March 9, 2011, EPA received adverse comments on the NPR from Mr. Robert Ukeiley on behalf of the Chesapeake Bay Foundation, the Group Against Smog and Pollution, the National Parks Conservation Association, and the Sierra Club. A summary of the comments submitted and EPA's response is provided below.

Comment: The commenter stated that EPA should not approve the determination of attainment because the Pittsburgh Area does not have a plan to meet the 1997 8-hour ozone NAAQS.

Response: EPA disagrees with the commenter's assertion that no common sense or legal basis exists for EPA to finalize its determination of attainment. The sole question addressed by EPA's rulemaking is whether the monitored ambient air quality in the area shows that the area has attained the 1997 8-hour ozone standard. The commenter does not contest EPA's finding that the Pittsburgh Area meets this NAAQS. Upon EPA's final determination that the area has attained the standard, 40 CFR 51.918 provides that the CAA requirement to submit planning SIPs associated with attainment of that standard are suspended for as long as the area continues to have ambient air quality data that meets that NAAQS. This regulation, which was upheld by the United States Court of Appeals for the District of Columbia Circuit (DC Cir) in *NRDC* v. *EPA,* 571 F.3d 1245 (*DC Cir.* 2009), is based on the principle that when an area is already attaining a standard, and continues in attainment, there is no basis for requiring planning SIPs to attain that standard. In other words, if an area is meeting the NAAQS, it does not need a plan to meet the NAAQS. No additional measures are required for the area to attain the standard, since the area is already in attainment. In any event, EPA's determination of attainment is based solely on quality-assured ambient air quality monitoring. It is 40 CFR 51.918 that directs the suspension of planning requirements for the 1997 8-hour ozone standard. This suspension lasts only for so long as the area continues in attainment. Contrary to the commenter's contention, under these circumstances there are no adverse impacts from the suspension.

Comment: The commenter asserts that the data from ambient air quality monitors in the Pittsburgh Area do not meet the 75 parts per billion (ppb) 2008 NAAQS or the 60 to 70 ppb levels proposed in EPA's reconsideration of the 2008 NAAQS.

Response: EPA's rulemaking action here addresses only the 1997 8-hour ozone NAAQS, and has no bearing on whether the area is attaining any other NAAQS or requirements under any other NAAQS. Therefore, this comment is not relevant to this rulemaking action.

Comment: The commenter alleges that EPA must perform an evaluation under CAA Section 110(l) to justify a determination of attainment for the Pittsburgh Area, and further alleges that CAA Section 110(l) would show that EPA should disapprove the attainment determination. The commenter contends that EPA must analyze how delaying implementation of the 1987 SIP revisions, including RACT, will interfere with other NAAQs attainment.

Response: CAA Section 110(l) applies explicitly and only to a ''revision to an implementation plan.'' As set forth in the response to comment above, EPA's rulemaking here is restricted to EPA's determination, based on ambient air quality, that the Pittsburgh Area is attaining the 1997 8-hour ozone standard. It is not a SIP revision, and thus section 110(l) is by its own terms not applicable to this rulemaking. It is not this determination of attainment, but rather EPA's ozone implementation rule, 40 CFR 51.918, that specifies the consequence of the determination as suspension of the area's obligations to submit an attainment demonstration, a RFP plan, contingency measures and other planning requirements related to attainment as SIP revisions for as long as the area continues to attain. In any case, the requirements that are suspended by the regulation are related solely to attainment for the 1997 8-hour ozone standard. EPA is determining, and the commenter does not contest, that the area is attaining that standard and the suspension of attainment planning SIP submissions lasts only as long as the area is meeting that standard. No other requirements are suspended. The commenter is incorrect in arguing that the determination of attainment would delay implementation of measures needed for attainment of the 1997 8-hour ozone standard, and that it would relax SIP control measures. This action has no effect on control measures, or air quality, in the area. For example, contrary to commenter's contention, RACT requirements for the 1997 8-hour ozone standard (or for any other standard), are not suspended or delayed by this determination, nor by 40 CFR 51.918.

In sum, no evaluation under section 110(l) is required by law, and even if such an evaluation were required, EPA would conclude that this determination of attainment would not interfere with attainment, reasonable further progress towards attainment, or any other applicable requirement of the CAA.

IV. Final Action

EPA has determined that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS based on 2007 to 2009 complete, quality-assured, and certified ambient air quality monitoring data. Data in AQS for 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, this determination suspends the requirements for the Commonwealth of Pennsylvania to submit, for the Pittsburgh Area, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS as long as the area continues to attain the 1997 8-hour ozone NAAQS.

This action is not a redesignation. The Pittsburgh Area will remain designated nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

V. Statutory and Executive Order Reviews

This action makes a determination of attainment based on air quality and results in the suspension of certain

Federal requirements, and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

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

In addition, this determination that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This determination that the Pittsburgh Area has attained the1997 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 23, 2011,

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2037, paragraph (q) is added to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(q) *Determination of attainment*—In accordance with 40 CFR 51.918, EPA has determined that Pittsburgh-Beaver Valley 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard and that certain requirements of section 172(c) of the Clean Air Act are suspended as long as the nonattainment area continues to meet the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring period. Complete, quality-assured air monitoring data for 2010 are consistent with continued attainment. This determination suspends the obligation of the Commonwealth of Pennsylvania to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area for as long as the area continues to meet the 1997 8-hour ozone NAAQS. If a violation of the1997 8-hour ozone NAAQS is monitored in the Pittsburgh-Beaver Valley 8-hour ozone nonattainment area, this determination shall no longer apply.

[FR Doc. 2011–13275 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0084–201135; FRL–9312–5]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama, Georgia, and Tennessee: Chattanooga; Determination of Attaining Data for the 1997 Annual Fine Particulate Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Chattanooga, Tennessee-Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Chattanooga Area'' or ''Area'') has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). The Chattanooga Area is comprised of Hamilton County in Tennessee, Catoosa and Walker Counties in Georgia, and a portion of Jackson County in Alabama. This determination of attainment is based upon quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be

suspended so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on June 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2011–0084. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is EPA's final action?
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is determining that the Chattanooga Area (comprised Hamilton County in Tennessee, Catoosa and Walker Counties in Georgia, and a portion of Jackson County in Alabama) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2007–2009 data.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on March 22, 2011 (76 FR 15895). For summary purposes, a monitor in Rossville did not meet data completeness requirements for 2007 due to monitor shut-down. Data substitution was used to determine the attainment status of the Rossville site. The Georgia Environmental Protection Division (GA EPD) developed a weight-of-evidence approach for an alternative method of data substitution. EPA determined that GA EPD successfully demonstrated a strong correlation between the $PM_{2.5}$ data from the Rossville site and two other sites in the Area. The annual design value for 2007–2009 for the Chattanooga Area is 12.7 $\mu g/m^3$, at the Siskin Drive site (47–065–4002). The comment period closed on April 21, 2011. No comments were received in response to the NPR.

II. What is the effect of this action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. Finalizing this action does not constitute a redesignation of the Chattanooga Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

III. What is EPA's final action?

EPA is determining that the Chattanooga Area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the period 2007–2009. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. EPA is taking this final action because it is in accordance with the CAA and EPA policy and guidance.

IV. Statutory and Executive Order Reviews

This action makes a determination of attainment based on air quality, and will result in the suspension of certain federal requirements, and it will not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this 1997 $PM_{2.5}$ clean NAAQS data determination for the Chattanooga Area 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: May 19, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.62 is amended by adding paragraph (b) to read as follows:

§ 52.62 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(b) *Determination of Attaining Data.* EPA has determined, as of May 31, 2011, the Chattanooga, Tennessee, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Subpart L—Georgia

■ 3. Section 52.578 is amended by adding paragraph (b) to read as follows:

§ 52.578 Control Strategy: Sulfur oxides and particulate matter.

* * * * *

(b) *Determination of Attaining Data.* EPA has determined, as of May 31, 2011, the Chattanooga, Tennessee, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Subpart RR—Tennessee

■ 4. Section 52.2231 is amended by adding paragraph (c) to read as follows:

§ 52.2231 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(c) *Determination of Attaining Data.* EPA has determined, as of May 31, 2011, the Chattanooga, Tennessee, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

[FR Doc. 2011–13269 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–9310–9]

Prevention of Significant Deterioration (PSD) Program; Massachusetts; Announcing Delegation Agreement Between EPA and Massachusetts Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of delegation agreement.

SUMMARY: This document announces that effective April 11, 2011, EPA Region 1 has signed an agreement with the Massachusetts Department of Environmental Protection (MassDEP) delegating authority to implement and enforce the Federal Prevention of Significant Deterioration (PSD) program to the MassDEP. Therefore, effective that date, MassDEP is the implementing authority for the PSD program in Massachusetts. This document explains the consequences of this change for owners and operators of sources that have PSD permits or that will need such permits in the future.

DATES: *Effective Date:* EPA's PSD program delegation agreement with the MassDEP is effective on April 11, 2011.

ADDRESSES: The Delegation Agreement is available either electronically through *http://www.epa.gov/NE/communities/nseemissions.html* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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.

Copies of the Delegation Agreement are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, EPA Region 1, (617) 918–1652, or send an e-mail to *mccahill.brendan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: On June 30, 1982 EPA delegated authority to implement the Federal PSD program in 40 CFR 52.21 to the MassDEP. On December 31, 2002, EPA published in the **Federal Register** revisions to the Federal PSD regulations (67 FR 80186). A final rule revising the Federal portions of implementation plans in 40 CFR part 52 to include the revisions to the Federal PSD regulations was published in the **Federal Register** on March 10, 2003. Both of these actions were effective on March 3, 2003.

On February 27, 2003, the MassDEP notified the Regional Administrator of EPA Region 1 that the MassDEP would not accept authority for the

implementation of the amended PSD program and was ending its June 30, 1982, agreement with EPA to assume responsibility for implementing the Federal PSD regulations. The letter from the MassDEP explained that the MassDEP would no longer implement the Federal PSD program as of March 3, 2003. Consequently, as of March 3, 2003, sources of air pollution located in Massachusetts and subject to the Federal PSD program were required to apply for and receive a PSD permit from EPA New England before beginning actual construction.

On June 17, 2003, EPA published a **Federal Register** announcing the MassDEP's decision to end its delegation agreement with the EPA and explaining the consequences of this decision for owners and operators of sources that have PSD permits or that will need such permits in the future (68 FR 35881).

On April 4, 2011, the Commissioner of the MassDEP signed a delegation agreement under which EPA would again delegate responsibility for conducting source review under the Federal PSD regulations to the MassDEP.

II. Final Action: On April 11, 2011, the Regional Administrator of EPA Region 1 signed the delegation agreement, which is entitled ''Agreement for Delegation of the Federal Prevention of Significant Deterioration Program by the United States Environmental Protection Agency, Region 1 to the Massachusetts Department of Environmental Protection,'' and which sets forth the terms and conditions according to which the MassDEP agrees to implement and enforce the Federal PSD program. The Regional Administrator's signature on the delegation agreement grants full delegation of the Federal PSD regulations at 40 CFR 52.21 to the MassDEP pursuant to the terms and conditions of the delegation agreement, 40 CFR 52.21(u), and the requirements of the Clean Air Act.

Effective on April 11, 2011, all permit applications for new or modified major sources and all other information pursuant to 40 CFR 52.21 for sources in the Commonwealth of Massachusetts, and all inquiries regarding the implementation of 40 CFR 52.21 in the Commonwealth, should be sent directly to the MassDEP at the following address: Massachusetts Department of Environmental Protection, One Winter Street, Boston, MA, 02108. In addition, the MassDEP will assume responsibility to administer and enforce all PSD permits issued in Massachusetts, including those PSD permits already issued by EPA. EPA retains authority to issue and administer permits in certain limited areas of federal jurisdiction defined in the delegation agreement, and also retains authority to issue a PSD permit to Pioneer Valley Energy Center (PVEC) in Westfield, Massachusetts. Finally, EPA retains certain oversight roles regarding federal requirements, which are set forth in detail in the delegation agreement.

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.

Dated: May 13, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2011–12950 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0418; FRL–9249–3]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on August 2, 2010 and concerns oxides of nitrogen (NOx) emissions from boilers, steam generators and process heaters with a rated heat input rate greater than 2 million BTU/hr and less than 5 million BTU/hr and internal combustion engines with a rated brake horse power of 50 or greater. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulates these emission sources and directs California to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on June 30, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0418 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 942–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
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I. Proposed Action

On August 2, 2010 (75 FR 45082), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	361	Small Boilers, Steam Generators and Process Heaters.	01/17/08	07/18/08
SBCAPCD	333	Control of Emissions from Reciprocating Internal Combustion Engines.	06/19/08	10/20/08

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because

some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

The following provisions in Rule 361 conflict with section 110(a) the Act and prevent full approval of the SIP revision.

1. Section F.3 defines the length of the startup and shutdown intervals as ''not last[ing] longer than is necessary to reach stable temperatures and conditions.'' This leads to enforceability concerns due to the lack of specificity of the duration of these periods. The duration of these periods should be further specified.

2. Section G.4 states that documentation of fuel sulfur content must be kept as a record. The type of documentation required should be specified in the rule.

The following provisions in Rule 333 conflict with section 110(a) the Act and prevent full approval of the SIP revision.

1. Rule 333 includes various provisions allowing for APCO discretion without having explicit and replicable procedures that define how the discretion will be exercised to assure emission reductions.

2. Section F.3 indicates that portable analyzer reading in excess of the emission limits triggers another reading in 15 days and monthly readings for 3 months. These high portable analyzers readings should instead trigger a source test within 60 days of the excess emission reading.

3. Section I.1 indicates that source tests shall be performed at the engine's maximum load or under the engines' typical duty cycle as demonstrated by historical operation data. This should be constrained to the engine's maximum load or conditions specified in the Permit to Operate. The option for testing at the engine's typical duty cycle should be further defined and justified.

EPA Recommendations To Further Improve the Rule

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules but that are not the basis for disapproval at this time.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. If this disapproval is finalized, no sanctions will be imposed under section 179 of the Act because SBCAPCD is not required to have these rules in the applicable SIP. A final disapproval would also not trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SBCAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial

direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on June 30, 2011.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 14, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(359)(i)(E) and (361)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(359) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

(*1*) Rule 361, ''Small Boilers, Steam Generators and Process Heaters,'' adopted on January 17, 2008.

* * * * *

(c) * * *

(361) * * *

(i) * * *

(A) * * *

(*2*) Rule 333, ''Control of Emissions from Reciprocating Internal Combustion Engines,'' adopted on June 19, 2008.

* * * * *

[FR Doc. 2011–13273 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2010–0504–201052; FRL–9312–9]

Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve requests from the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), and the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), to grant a one-year extension of the attainment date for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina Area (hereafter referred to as the ''bi-state Charlotte Area'' or ''Metrolina Area''). These requests were sent to EPA via letter from NC DENR on April 28, 2010, and from SC DHEC on May 6, 2010. The bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (Davidson and Coddle Creek Townships), North Carolina; and a portion of York County, South Carolina. EPA is finalizing a determination that North Carolina and South Carolina have met the Clean Air Act (CAA or Act) requirements to obtain a one-year extension to their attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is approving a one-year extension of the 1997 8-hour ozone moderate attainment date for the bi-state Charlotte Area. Specifically, EPA (through this final action) is extending the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011. EPA is also addressing adverse comments received on EPA's proposal to grant the one-year extension for the bi-state Charlotte 1997 8-hour ozone nonattainment area.

DATES: *Effective Date:* This rule will be effective June 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0504. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the 1997 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number for Ms. Spann is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.* For information regarding the North Carolina or South Carolina SIPs, contact Mr. Zuri Farngalo, Regulatory Development Section, at the same address above. The telephone number for Mr. Farngalo is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Detailed background information and rationale for this final action can be found in EPA's proposed rule entitled ''Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area,'' 75 FR 46881 (August 4, 2010). The comment period for EPA's proposed action closed on September 3, 2010. EPA received three sets of comments on the August 4, 2010, proposed rulemaking which are discussed later in this rulemaking. This section includes a brief summary of the information and rationale for EPA's proposed approval of the bi-state Charlotte Area's one-year extension.

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether an ozone nonattainment area attained the NAAQS. CAA section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next classification. However, CAA section 181(a)(5) provides an exemption from these reclassification requirements. Under this provision, EPA may grant up to two one-year extensions of the attainment date under specified conditions. Specifically, in relevant part, section 181(a)(5) states:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

With regard to the first element, ''applicable implementation plan'' is defined in section 302(q) of the CAA as, the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

The language in section 181(a)(5)(B) reflects the form of the 1-hour ozone NAAQS, which is exceedance based and does not reflect the 1997 8-hour ozone NAAQS, which is concentration based. Because section 181(a)(5)(B) does not reflect the form of the 8-hour NAAQS,

EPA promulgated a regulation interpreting this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS. *See* 40 CFR 51.907. This regulation provides that an area will be eligible for the first of the one-year extensions under the 1997 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 parts per million (ppm) or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less. No more than two one-year extensions may be issued for a single nonattainment area.

In summary, EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less, if a second one-year extension is requested). Because the bi-state Charlotte Area's attainment date was June 15, 2010, the ''attainment year'' used for this purpose is the 2009 ozone season. *See* 40 CFR 51.900(g). The North Carolina and South Carolina ozone seasons run from April 1 to October 31 of any given year.

II. This Action

EPA has determined that North Carolina and South Carolina have met the CAA requirements to obtain a one-year extension of the June 2010 attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. As a result, EPA is taking final action to extend the bi-state Charlotte Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS. Specifically, EPA has determined that North Carolina and South Carolina are in compliance with the requirements and commitments associated with the EPA-approved implementation plans, and that the 4th highest daily concentration for 2009 for the bi-state Charlotte Area is below the 1997 8-hour ozone NAAQS. EPA has reviewed the 1997 8-hour ozone NAAQS ambient air quality monitoring data for the bi-state Charlotte Area, and has determined that these data are consistent with the ozone monitoring requirements contained in 40 CFR part 50, Appendix I. These data are recorded in the EPA Air Quality System database. These data are complete, quality-assured, quality-controlled, and certified ambient air monitoring data for 2009. On the basis of that review, EPA has concluded that for the attainment year ozone season of 2009, the bi-state Charlotte Area's 4th highest daily 8-hour average concentration was 0.071 ppm, which is below 0.084 ppm. As provided in CAA section 181(a)(5) and 40 CFR 51.907, this final action extends, by one year, the deadline by which the bi-state Charlotte Area must attain the 1997 8-hour ozone NAAQS. It also extends the timeframe by which EPA must make an attainment determination for the bi-state Charlotte Area.

As described in section 181(a)(5) of the CAA, areas may qualify for up to two one-year extensions. EPA notes that this final action only relates to the initial one-year extension. The bi-state Charlotte Area will be eligible for the second extension if the bi-state Charlotte Area's 4th highest daily 8-hour value averaged over both the original attainment year and the first extension year is 0.084 ppm or less and the continues to comply with all requirements and commitments pertaining to the bi-state Charlotte Area in the applicable implementation plan. Any analysis of whether the bi-state Charlotte Area qualifies for the second extension would be based on data from both the 2009 and 2010 ozone seasons. If requested at a future date, EPA will make a determination of the appropriateness of a second one-year extension for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS in a separate rulemaking.

III. Comments and Responses

EPA received one set of adverse comments [1] and two requests for additional information for its proposal to approve the requests from North Carolina and South Carolina to extend the attainment date for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS from June 15, 2010, to June 15, 2011. The comments, received by September 3, 2010, were from the Southern Environmental Law Center (SELC) on behalf of Clean Air Carolina and from two citizens (hereinafter referred to as ''the Commenter''). Below is a summary of the comments and EPA's response.

Comment 1: The Commenter requests clarification on why the attainment date for the bi-state Charlotte Area needs an extension and on what grounds is the extension being granted.

Response 1: Effective June 15, 2004, EPA designated the bi-state Charlotte Area as nonattainment for the 1997 8-hour ozone NAAQS. Along with this nonattainment designation, EPA classified the bi-state Charlotte Area as a ''moderate'' ozone nonattainment area based on the level of the three year design value for the area at the time of EPA's designations. In accordance with the section 181 of the CAA, ''moderate'' areas are required to attain the ozone NAAQS ''as expeditiously as practicable,'' but no later than 6 years after EPA's nonattainment designation. This means that the bi-state Charlotte Area was required to attain the 1997 8-hour ozone NAAQS by June 15, 2010 (based on monitoring data from the 2007 through 2009 ozone seasons). In section 181(a)(5) of the CAA, Congress allows EPA to consider extension of the attainment dates for ozone areas provided the area meets the requirements for such extensions. See EPA's August 4, 2010, proposed rulemaking at 75 FR 46881 for the detailed rationale for approval of the bi-state Charlotte Area's attainment date extension, and the ''Background'' section of this rulemaking for more detail on the section 181(a)(5) requirements. EPA has made the determination that both North Carolina and South Carolina meet the requirements of section 181(a)(5) (as interpreted in 40 CFR 51.907) for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS, and as such EPA is granting an extension of the 1997 8-hour ozone attainment date from June 15, 2010, to June 15, 2011.

Comment 2: The Commenter requests that EPA incorporate by reference comments previously provided for the attainment demonstrations for the bi-state Charlotte Area. Specifically, the Commenter states ''[t]hese comments incorporate by reference SELC's June 10, 2010 and May 19, 2010 comments to the agency on the North Carolina and South Carolina 8-hour ozone attainment demonstration plan submission, and SELC's March 29, 2010, March 22, 2010, December 17, 2009, November 13, 2003, and October 26, 2009, submissions to the North Carolina Division of Air Quality ('NCDAQ') and the South Carolina Bureau of Air Quality, all of which have been previously submitted to EPA.''

[1] The full text of the comments is available in the Docket for this action. Electronic docket information can be found in the ''Addresses'' portion of this notice. The comments are summarized in this **Federal Register** document; however, EPA considered all the comments expressed in the letters.

Response 2: EPA's August 4, 2010, proposed action relates to the States' requests for a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, and does not relate to the approvability of the attainment demonstrations submitted by North Carolina and South Carolina for the bi-state Charlotte Area. There are separate requirements regarding requests for attainment date extensions (relevant to this final action and described in ''Background'' sections of EPA's August 4, 2010, proposed rulemaking and this final rulemaking) and approval of attainment demonstrations. EPA held a public comment period from August 4, 2010, through September 3, 2010, to provide the public with opportunity to specifically comment on the proposed approval of the attainment date extension for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. The Commenter provided a detailed letter with their comments in opposition to EPA's proposed action to extend the bi-state Charlotte Area's attainment date to which EPA is responding in this final rulemaking. Although the Commenter suggests that EPA should incorporate by reference comments previously submitted to North Carolina and South Carolina during their state public comment periods for their attainment demonstrations and reasonable further progress plans, and to EPA during a public comment period on the attainment demonstration for the bi-state Charlotte Area,[2] the Commenter does not identify and EPA did not identify anything in those comments that are relevant to the analysis of whether the bi-state Charlotte Area is eligible for the first attainment date extension provided under CAA section 181(a)(5) and 40 CFR 51.907.

Comment 3: The Commenter asserts several times throughout the comment letter that EPA should reclassify the bi-state Charlotte Area to ''serious'' for the 1997 8-hour ozone NAAQS. Specifically, the Commenter states ''EPA should instead reclassify the area to 'serious' nonattainment status * * *'' and ''[i]n the wake of the missed deadline, the Act now requires reclassification of the Metrolina area to 'serious' status.'' The Commenter goes on to conclude that ''[t]he proposed extension is inconsistent with the Clean Air Act's statutory scheme and its emphasis on attainment deadlines. EPA should require North and South Carolina officials to comply with the Act and prepare a SIP revision consistent with the Metrolina area's legally required bump-up to 'serious' status.''

Response 3: EPA disagrees with the Commenter's assertions and conclusion that the Act requires the Agency to reclassify the bi-state Charlotte Area to ''serious'' for the 1997 8-hour ozone NAAQS ''[i]n the wake of the missed deadline * * *'' Congress contemplated the potential for areas to miss the attainment date deadlines in the CAA and allows for extensions of the attainment date deadline so long as areas meet the requirements of section 181(a)(5). EPA's analysis indicates that both North Carolina and South Carolina have met the requirements of section 181(a)(5) of the CAA (as interpreted by 40 CFR 51.907) for the initial one-year extension of the 1997 8-hour ozone moderate area attainment date for the bi-state Charlotte Area, and thus the Act does not require EPA to reclassify the bi-state Charlotte Area to ''serious'' status. Additionally, given that EPA has determined that the bi-state Charlotte Area qualifies for the one-year extension for the moderate ozone classification, the bi-state Charlotte Area is not subject to being ''bumped-up'' and thus is not subject to the planning requirements that would be triggered by a bump-up.

Comment 4: The Commenter states ''[t]he deadline for meeting the 1997 ozone standard was June 15, 2010, and there is still no Federally approved State Implementation Plan ('SIP') for meeting that standard. As a result, EPA lacks authority to grant the proposed extension, and the Metrolina area should instead be reclassified to 'serious' nonattainment status, triggering the development of a new plan with additional control strategies. As we explained in our previous comments, the Clean Air Act allows EPA to grant extensions only when a state has complied with all the requirements of the approved SIP for an area. The States have no approved SIP for meeting the ozone NAAQS in this area. As indicated in the notice, both states have provided 'necessary SIP [State Implementation Plan] submittals,' intended to meet 'outstanding requirements related to the 1997 8-hour ozone attainment demonstration for the bi-state Charlotte area.' But these plan submissions were not made until after the conclusion of the 2009 ozone season, and therefore could only purport to demonstrate attainment of the 1997 ozone NAAQS, retroactively, despite modeling and monitoring data to the contrary. The proposed extension signifies a *de facto* approval of these plans and introduces a relaxed *post hoc* standard, which would be contrary to the requirements of the Act and which would encourage states to take a 'wait-and-see' approach to SIP control strategies.''

Response 4: EPA does not agree with the Commenter's assertion that EPA lacks the authority to grant the requests from North Carolina and South Carolina for an extension of the bi-state Charlotte Area's 1997 8-hour ozone attainment date. In EPA's August 4, 2010, proposed rulemaking, EPA explained that section 181(a)(5) of the CAA is what EPA must consider when contemplating a state's request for a one-year extension to an ozone attainment date. The Commenter appears to question whether North Carolina and South Carolina meet the requirements of section 181(a)(5)(A) which states ''the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan * * *'' As noted in EPA's August 4, 2010, proposed rulemaking, the ''applicable implementation plan'' is defined by the CAA in section 302(q) as ''the portion (or portions) of the implementation plan, or most revision thereof, *which has been approved* under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.'' [Emphasis added].Thus, the ''compliance'' that is relevant to evaluating the States' eligibility for an attainment date extension under section 181(a)(5) is solely with those requirements and commitments that have been approved into the existing SIP—not with those which may yet be approved. EPA has made an independent assessment of whether North Carolina and South Carolina are in compliance with all the requirements and commitments pertaining to the bi-state Charlotte Area in the applicable implementation plan, as defined by section 302(q), and the Agency has made the determination that both states are in compliance. EPA also notes that originally, North Carolina and South Carolina submitted attainment demonstrations for the bi-Charlotte Area for the 1997 8-hour ozone NAAQS on June 15, 2007, and August 31, 2007, respectively. Subsequently, both states withdrew their original attainment demonstrations but later submitted these attainment demonstrations with

[2] The Commenter submitted comments during EPA's public comment period for review of the adequacy of the motor vehicle emissions budgets for the attainment demonstrations for the bi-state Charlotte Area as provided by North Carolina and South Carolina. EPA has a separate process from today's rulemaking to consider comments received during EPA's Adequacy public comment period.

updated and supplemental information. EPA disagrees that this final action is a *de facto* approval of these plans. These plans are still pending before EPA. The Commenter also mentions that EPA's final action to approve the extension of the attainment date for the bi-state Charlotte Area introduces a relaxed *post hoc* standard, which would be contrary to the requirements of the Act and which would encourage states to take a ''wait-and-see'' approach to SIP control strategies. EPA disagrees. If EPA determines that a state has not submitted a required nonattainment area SIP, mandatory sanctions are imposed 18 and 24 months after such a finding and EPA is required to promulgate a Federal implementation plan within two years. The CAA provides appropriate incentives to ensure that states do not take a ''wait and see'' approach for attainment of the NAAQS. When North Carolina and South Carolina withdrew their original attainment demonstrations for the bi-state Charlotte Area (which were provided in 2007), EPA issued a finding of failure to submit. *See* 74 FR 21550 (May 8, 2009). The submissions that both North Carolina and South Carolina provided in 2009 were provided in response to EPA's finding of failure to submit.

Comment 5: One Commenter states ''[t]he Metrolina area's ozone problem is chronic and significant.'' Additionally, the Commenter cites the American Lung Association 2010 State of the Air Report and mentions that the report ranks Charlotte as the 10th most polluted city in the country for ozone. The Commenter goes on to state that ''[i]n contrast to the anomalous 2009 ozone season, pollution levels during the first part of the 2010 summer have continued to exceed the 1997 standard of 84 ppb [parts per billion][or 0.084 ppm], with the 'County Line' monitor registering as high as 96 ppb [or 0.096 ppm], and the Metrolina monitors recording 30 exceedances of the 2008 standard (75 ppb [or 0.075 ppm]) as of August 28, 2010. Air quality planning should do as much as possible to protect citizens' health in nonattainment areas, and at the very least, the region must comply with express Clean Air Act Requirements.'' Another Commenter states ''[t]he 2010 ozone season clearly shows that the current control methods to obtain attainment for the 1997 standard for the Charlotte region are not effective. The 2009 ozone season had favorable weather conditions. This alone allowed for the low ozone numbers. The intent of Congress, through the CAA, is for non-attainment areas to reach attainment. Delaying the decision by one year will allow the Charlotte area to continue building roads. Is not mobile sources the largest contributor to ozone formation in the Charlotte area?''

Response 5: EPA agrees with the Commenters that the unusually hot summer of 2010 resulted in more exceedances of the ozone NAAQS at the monitors within the bi-state Charlotte Area. However, based on EPA's preliminary evaluation of the data, the bi-state Charlotte Area appears to still be monitoring attainment for the 1997 ozone NAAQS. Additionally, EPA's preliminary evaluation indicates that the bi-state Charlotte Area could be eligible for the second extension of the attainment date, if requested. Regardless, air quality data for the 2010 ozone season is not relevant to the issue of whether the bi-state Charlotte Area qualifies for the first one-year extension of its attainment date as provided under CAA section 181(a)(5) and 40 CFR 51.907. EPA notes that nonattainment areas are allowed to build roads and are subject to requirements to demonstrate that these activities will not interfere with air quality goals. EPA's granting of the one-year extension to the attainment date will not relieve the bi-state Charlotte Area of continuing to make the demonstration that transportation planning activities will not interfere with air quality goals.

Comment 6: The Commenter states ''EPA may only extend the nonattainment deadline for an area that has not met the NAAQS if 'the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan.' 42 U.S.C. § 7511(a)(5)(A). The Act defines 'the term ''applicable implementation plan'' ' as 'the portion (or portions) of the implementation plan, or most recent revision thereof, *which has been approved* under section 110 of this title.' Id. § 7602(q). [Emphasis added] Section 110, in turn, provides that '[e]ach State shall * * * adopt and submit to the Administrator, *within 3 years* * * * *after promulgation of a [NAAQS]* (or any revision thereof) under section 109 [42 § USCS 7409] for any air pollutant, *a plan* which provides for implementation, maintenance, an enforcement of such primary standard in each air quality control region * * * within such State,' Id. § 7410(a)(1). Section 110 goes on to prescribe that 'each such plan shall * * * meet the applicable requirements of Part D of this subchapter (relating to nonattainment areas).' Id. § 7410(a)(1). Among the applicable requirements of Part D, 'plan provisions * * * *shall provide for attainment* of the national ambient air quality standards.' Id. § 7502(c)(1). In other words, to qualify for an extension, a state must comply with its federally approved SIP, which among other requirements, must demonstrate attainment.''

Response 6: EPA agrees with the Commenter's citation to 42 U.S.C. 7511(a)(5)(A)[section 181(a)(5)(A)], and to 42 U.S.C. 7602(q) [section 302(q)] as the relevant provisions of the CAA to consider. Additionally, EPA agrees with the Commenter's emphasis on ''which has been approved'' of the Act's definition for the term ''applicable implementation plan.'' It is the emphasis on ''which has been approved'' that EPA relied on to make the determination that North Carolina and South Carolina are meeting the requirements of 181(a)(5)(A). However, EPA does not agree with the Commenter's apparent broadening of the definition of ''applicable implementation plan'' to mean that EPA must consider plans which have not yet been approved. The CAA is unambiguous on the requirements for EPA to grant an extension and on what EPA should consider as the ''applicable implementation plan,'' and based on those requirements, EPA has determined that both North Carolina and South Carolina qualify for an extension of the attainment date for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area.

Comment 7: The Commenter notes that both North Carolina and South Carolina submitted attainment demonstrations for the bi-state Charlotte Area in 2007, but later withdrew these submissions after EPA sent a letter to both States with a recommendation that North Carolina and South Carolina request a voluntary reclassification of the bi-state Charlotte Area to ''serious'' status for the 1997 8-hour ozone NAAQS. Additionally, the Commenter notes that in EPA's letter, the Agency states ''if we are required to take rulemaking action on the SIP, we see no alternative to proposing disapproval of the SIP's attainment demonstration.'' The Commenter goes on to state that ''[c]learly, the States submitted 'a plan' as contemplated by the extension provision, but it was not an approvable plan, and therefore, not a plan that would provide a basis for a future extension request. Indeed, rather than demonstrate attainment, the modeling in the submissions actually predicted that the area would fail to meet the standard by the deadline. After signaling its intent to disapprove the submissions, however, EPA allowed the States to ''withdraw'' their plans, an

action that is not authorized under the Clean Air Act, which contravenes EPA's obligation to take action on a plan submission, and 'approve or disapprove it, either in whole or in part.' ''

Response 7: These comments are not relevant to this rulemaking. The issues raised concern whether attainment demonstrations submitted in 2007 adequately demonstrated whether the bi-state Charlotte Area would attain the 1997 ozone NAAQS by June 2010 and they do not address whether the bi-state Charlotte Area qualifies for an attainment date extension. EPA notes, however, that we disagree with the Commenter's assertion that States are not authorized under the CAA to withdraw submitted SIPs. The CAA does not directly address this issue; however, EPA can see no reasonable interpretation that the Act prohibits a state from withdrawing a submitted plan prior to EPA final action. The CAA provides states with a choice whether to submit plans and to take the lead in regulating sources for purposes of attainment and maintenance of the NAAQS. Consistent with that overall paradigm, states can choose to withdraw submitted SIPs at any time prior to EPA final action, which establishes those requirements under Federal law. Once the plan is approved and made Federally enforceable, it can no longer be withdrawn or altered except through a SIP revision or a Federal implementation plan. If the withdrawn SIP had been submitted to meet a specific statutory requirement and the state does not replace the SIP submission upon withdrawal with a new SIP submission to meet that statutory requirement (or, in appropriate instances, with an attainment determination that suspends the obligation to meet such requirement), EPA has the authority to make a finding of failure to submit for that required submission. EPA also notes that subsequently, both North Carolina and South Carolina resubmitted their attainment demonstrations for the 1997 8-hour ozone NAAQS.

Comment 8: The Commenter states that ''[d]uring the 2009 ozone season, cool temperatures and a slow economy contributed to a dramatic decline in ozone pollution, albeit not enough to bring the three-year ozone design value into attainment by the June 2010 deadline. Nevertheless, the States have resubmitted their 'withdrawn' 2007 submissions for public comment and agency approval, along with supplemental plans that establish higher motor vehicle emissions budgets. These submissions do not provide the legal basis for an extension because they have never been federally approved, and thus have not be made federally enforceable, *see* 42 U.S.C. § 7413, and they therefore do not meet the definition of 'applicable implementation plan.' ''

Response 8: As provided in previous responses, EPA disagrees with the Commenter's premise that the attainment demonstration submissions are required to be approved in order for EPA to grant the request from North Carolina and South Carolina for a one-year extension to the attainment date for the 1997 8-hour ozone NAAQS.

Comment 9: The Commenter states that ''EPA's **Federal Register** notice appears to indicate that the States 'are meeting their federally-approved implementation plans' by virtue of adequate monitoring alone. 75 Fed. Reg. 46881, 46883.'' Further, the Commenter mentions that ''EPA guidance documents direct states requesting an extension under 42 U.S.C. § 7511(a)(5) to both certify compliance with the approved SIP for the current classification, and to document the preparations being taken to address the 'consequences of eventually not attaining the NAAQS,' including meeting new requirements that take effect upon reclassification of the area.'' The Commenter concludes this point by stating ''[t]he States' extension requests, however, neither explain how they have complied with all requirements of an 'approved SIP' that does not exist, nor mention the possibility that the area might not attain the NAAQS by the extended deadline.''

Response 9: EPA disagrees with the Commenter's assertion that EPA's analysis of whether North Carolina and South Carolina ''are meeting their federally-approved implementation plans'' is ''by virtue of adequate monitoring alone.'' Over the past several years, the bi-state Charlotte Area has benefitted from the reduction in emissions attributable to the implementation of federal, state and local programs. Some of the federal control measures that have come on line since the bi-state Charlotte Area was designated nonattainment for the 1997 8-hour ozone NAAQS in 2004 include: Tier 2 vehicle and fuels standards; heavy-duty gasoline and diesel highway vehicle standards; nonroad spark-ignition engines and recreational engines standards; and large nonroad diesel engine standards. North Carolina has also implemented state programs that have provided emissions reductions in the bi-state Charlotte Area. These state programs include: (1) The Clean Air Bill which expanded the inspection and maintenance program from 9 to 48 counties; (2) North Carolina's nitrogen oxide (NOx) SIP Call rule which was predicted to reduce summertime NOx emissions from power plants and other industries by sixty-eight percent; and (3) North Carolina's Clean Smokestack Act which required coal-fired power plants in North Carolina to reduce annual NOx emissions by seventy-seven percent by 2009, and to reduce annual sulfur dioxide emissions by forty-nine percent by 2009 and seventy-three percent by 2013. Additionally, EPA disagrees with the Commenter's statement that an ''approved SIP'' does not exist for the bi-state Charlotte Area. As noted in EPA's proposed rulemaking, the ''applicable implementation plan'' is defined by the CAA in section 302(q) as the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA. Lastly, EPA disagrees with the Commenter's statement indicating that the States did not provide the necessary certification regarding compliance with their approved SIPs. On April 28, 2010, NC DENR stated in a letter to EPA, that it ''certifies that the state has complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan.'' On May 6, 2010, SC DHEC, in a letter to EPA, stated ''South Carolina has complied with all requirements and commitments pertaining to the area in the South Carolina State Implementation Plan.'' EPA believes that these statements provide the necessary certification from the States. EPA also notes that North Carolina and South Carolina considered the consequences of eventually not attaining the NAAQS. They conducted modeling for the year 2012 in case they did not have clean data and were required to be reclassified to serious. That modeling would have been submitted to EPA as the States' attainment demonstration for a serious classification had the area been reclassified to serious.

Comment 10: The Commenter states that ''[t]he agency's permissive proposed approach would encourage poor air quality planning. Indeed, the State's plan submissions allow unfettered expansion of the area's highway network without regard to long-term air quality consequences.'' The Commenter goes on to say that ''[r]eclassification of the area to 'serious' nonattainment status would require better developed and more accurate travel modeling that would help to

ensure that road capacity investments will not compromise air quality for years to come. *See* 40 CFR § 93.122''

Response 10: The August 4, 2010, proposed rulemaking and this final action do not involve the approval of any plans for the bi-state Charlotte Area for the 1997 8-hour ozone standard. Additionally, while not relevant to this final action, EPA notes that the development of the mobile emissions in the States' attainment demonstration plans for the bi-state Charlotte Area were developed through a required interagency process, pursuant to 40 CFR 93.105, that includes federal, state and local air quality and transportation partners. The Commenter mentions that the ''[r]eclassification of the area to 'serious' nonattainment status would require better developed and more accurate travel modeling that would help to ensure that road capacity investments will not compromise air quality for years to come.'' While EPA agrees that there are different travel demand modeling requirements for ''serious'' versus ''moderate'' ozone areas, EPA also notes that 40 CFR 93.122(d) states ''[i]n all areas not otherwise subject to paragraph (b) of this subsection, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO * * *'' The transportation modeling requirements for ''serious'' areas are outlined in 40 CFR 93.122(b). In a letter dated December 3, 2010, NC DENR provided EPA with additional information regarding the travel demand modeling practices currently employed in the bi-state Charlotte Area. Attached to the letter, the Senior Transportation Planner for the Charlotte Department of Transportation provides a comparison of the current practice for travel demand modeling for the entire bi-state Charlotte Area and the requirements of 40 CFR 93.122(b) for a ''serious'' area. The comparison demonstrates that the current practices for travel demand modeling meet the requirements for a ''serious'' area although the bi-state Charlotte Area is a ''moderate'' area. NC DENR's December 3, 2010, letter can be found in the docket for this final rulemaking. A reclassification of the area to ''serious'' would not change the current travel demand modeling practice in the bi-state Charlotte Area since the bi-state Charlotte Area is currently meeting the ''serious'' area requirements, and in accordance with 40 CFR 93.122(b) and (d), this practice must be maintained.

Comment 11: The Commenter mentions that ''[s]tate officials have argued that reclassifying and undertaking more stringent control measures to ensure compliance with the existing ozone standard is unnecessary because EPA will soon approve a new standard and require new plans to meet the standard.'' Further, the Commenter goes on to say, ''* * * not only has EPA recently delayed its expected release of the new, stricter standards, but even without delay, waiting until implementation of the new standard would result in several years of delay in the adoption of the additional control measures required today as part of 'bump up' to a 'serious' classification.'' The Commenter continues by noting the delay of the promulgation of the new ozone standard and anticipated dates for the attainment demonstration submissions. The Commenter mentions ''approval of inadequate plans now will only delay efforts to address the serious air quality problems in the Charlotte metro area and make attainment under the 2008 standard, or a stronger one, much more difficult, uncertain, and expensive.''

Response 11: Neither the States' position (as articulated by the Commenter) nor this comment are relevant to this action. This action solely concerns whether the States have demonstrated that a one-year attainment date extension is appropriate for the 1997 ozone NAAQS. EPA notes that in a separate process, the Agency is reconsidering the 2008 ozone NAAQS and, if EPA determines a different NAAQS should be promulgated, the Agency will undertake rulemaking to address the requirements for the implementation of that NAAQS. The fact that EPA may issue a new standard at a future date has no bearing on whether the area qualifies for a one-year extension of its attainment date for the 1997 ozone NAAQS.

Comment 12: In their comment letter, the Commenter notes that at a meeting with EPA Region 4, EPA staff suggested that the Act requires the Agency to grant an extension. The Commenter states ''[n]o legal grounds exist for such an interpretation'' and goes on to state ''[t]he agency only has authority to grant an extension when a state's air quality and compliance with an approved implementation plan satisfy the statutory requirements, and even then, the agency's authority to grant an extension is discretionary.'' The Commenter also states ''To the contrary, disapproving the plan submissions and requiring bump-up is the only action that complies with the plain meaning of the Clean Air Act.''

Response 12: For the reasons provided in previous comments, EPA disagrees with the Commenter's interpretation of the Act.

IV. Final Action

EPA is taking final action to approve North Carolina's April 28, 2010, and South Carolina's May 6, 2010, requests for EPA to grant a one-year extension (from June 15, 2010 to June 15, 2011) of the bi-state Charlotte Area attainment date for the 1997 8-hour ozone NAAQS. EPA has determined that both North Carolina and South Carolina have met the statutory requirements for such an extension.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions and requests that comply with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing the States' requests for an extension of the 1997 8-hour ozone NAAQS attainment date for the bi-state Charlotte Area, EPA's role is to approve the States' requests, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves a state request for an extension of the 1997 8-hour ozone NAAQS attainment date as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final 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).

EPA has also determined that the one year extension for the bi-state Charlotte Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte Area. EPA notes that the proposal for this rule incorrectly stated that the South Carolina ''SIP is not approved to apply in Indian country located in the state.'' However, pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP does apply to the Catawba Reservation. This final action to approve the one year extension for the bi-state Charlotte Area, however, does not add, subtract or change any existing state or local regulations in the SIP. Therefore, EPA has determined that there will be no substantial direct effects to the Catawba. In addition, EPA also notes that this final action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: May 19, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.334, the table entitled ''North Carolina–Ozone (8-Hour Standard)'' is amended under ''Charlotte-Gastonia-Rock Hill, NC-SC'' by revising the entries for ''Cabarrus County,'' ''Gaston County,'' ''Iredell County (part) Davidson Township, Coddle Creek Township,'' ''Lincoln County,'' ''Mecklenburg County,'' ''Rowan County,'' and ''Union County'', and adding footnote 4, to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE

[8-Hour standard]

Designated	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Charlotte-Gastonia-Rock Hill, NC–SC	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Cabarrus County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Gaston County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Iredell County (part) Davidson Township, Coddle Creek Township.	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Lincoln County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Mecklenburg County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Rowan County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
Union County	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[4] Subpart 2/Moderate.
* *	* *	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

* * * * * * *

[4] Attainment date extended to June 15, 2011.

* * * * * * *

3. In § 81.341, the table entitled ''South Carolina—Ozone (8-Hour Standard)'' is amended under ''Charlotte-Gastonia-Rock Hill, NC–SC'' by revising the entry for ''York County (part) Portion along MPO lines'' to read as follows:

§ 81.341 South Carolina.

* * * * *

SOUTH CAROLINA—OZONE

[8-Hour standard]

Designated	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Charlotte-Gastonia-Rock Hill, NC–SC:				
York County (part) Portion along MPO lines.	This action is effective May 31, 2011 ...	Nonattainment ..	June 15, 2004 ..	[3] Subpart 2/Moderate.
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
* * * * * * *
[3] Attainment date extended to June 15, 2011.
* * * * * * *

[FR Doc. 2011–13278 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 25

[ET Docket No. 10–142; FCC 11–57]

Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to make additional spectrum available for new investment in mobile broadband networks while also ensuring that the United States maintains robust mobile satellite service capabilities. First, this document adds co-primary Fixed and Mobile allocations to the Mobile Satellite Service (MSS) 2 GHz band, consistent with the International Table of Allocations, allowing more flexible use of the band, including for terrestrial broadband services, in the future. Second, to create greater predictability and regulatory parity with the bands licensed for terrestrial mobile broadband service, the document extends the Commission's existing secondary market spectrum manager spectrum leasing policies, procedures, and rules that currently apply to wireless terrestrial services to terrestrial services provided using the Ancillary Terrestrial Component (ATC) of an MSS system.

DATES: Effective June 30, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kevin Holmes, Wireless Telecommunications Bureau at 202–418–2487 or *kevin.holmes@fcc.gov,* or Nicholas Oros, Office of Engineering and Technology at 202–418–0636 or *nicholas.oros@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 11–57, adopted on April 5, 2011, and released on April 6, 2011, as corrected by an erratum issued on April 15, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-11-57A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary

The Federal Communications Commission makes additional spectrum available for new investment in mobile broadband networks while also ensuring that the United States maintains robust MSS capabilities. This action is consistent with Recommendation 5.8.4 of the National Broadband Plan, which recommended that 90 megahertz of spectrum allocated to MSS could be made available for terrestrial mobile broadband use, while preserving sufficient MSS capability to serve rural areas, public safety, and other important national purposes. The rules adopted herein: (1) Add co-primary Fixed and Mobile allocations to the MSS 2GHz band, consistent with the International Table of Allocations, and (2) extend the Commission's existing secondary market spectrum manager spectrum leasing policies, procedures, and rules that currently apply to wireless terrestrial services to services provided using the ATC of an MSS system.

I. Background

1. *Mobile Satellite Service Spectrum Allocation.* MSS is a radiocommunications service involving transmission between mobile earth stations and one or more space stations. As we discussed in the *MSS NPRM,* three MSS frequency bands are capable of supporting broadband service: The 2 GHz band (''S-band'') from 2000–2020 MHz and 2180–2200 MHz, the Big LEO Band from 1610–1626.5 MHz and 2483.5–2500 MHz, and the L-band from 1525–1559 MHz and 1626.5–1660.5 MHz. 75 FR 49871 (August 16, 2010). Although the International Table of Allocations includes a primary Fixed and Mobile services allocation along with the primary Mobile-Satellite allocation in the S-band, such co-allocations do not exist in the U.S. Table. The Big LEO and L-bands are not allocated for Fixed and Mobile services either in the United States or on an international basis.

2. In addition, as noted in the *MSS NOI,* MSS has the capability to serve important needs, such as rural access and disaster recovery. 75 FR 49871 (August 16, 2010). MSS has the ability to provide communications to mobile

user terminals anywhere in the United States, including in remote areas where people are without basic telecommunications services. MSS is particularly well suited for meeting the needs of the transportation, petroleum, and other vital industries. MSS operators have the ability to operate when existing terrestrial infrastructure is non-existent or has been degraded or destroyed and therefore can meet public safety and emergency communication needs in times of national crises and natural disasters. For example, MSS satellite networks were utilized in the aftermath of the terrorist attacks of September 11, 2001, and during the hurricane season of 2005. MSS units provide interoperable connections between emergency responders and other communications networks, and can even link U.S. emergency response providers with counterparts in neighboring countries.

3. *Terrestrial Use of MSS Spectrum.* At present, use of these MSS bands for terrestrial mobile service is permitted only under the Commission's ATC rules and in association with the existing satellite system authority. The Commission adopted the ATC rules in 2003. ATC consists of terrestrial base stations and mobile terminals that re-use frequencies assigned for MSS operations. In the *MSS NPRM,* we noted that technological developments involving the use of MSS/ATC spectrum could soon lead to the provision of mobile broadband services similar to those provided by terrestrial mobile providers. In particular, we observed that SkyTerra (now LightSquared) plans to construct an integrated national satellite/terrestrial mobile broadband network, which would make use of both MSS spectrum and terrestrial spectrum that it has already leased in the secondary market, and that the services it would offer have the potential to expand services offered in the overall market of mobile terrestrial wireless services and to enhance competition in this larger mobile marketplace. In addition to LightSquared, three other MSS licensees have received ATC authority, although none of these currently has commercial terrestrial ATC stations in operation. We note that Globalstar's ATC authority has been suspended for failure to come into compliance with the ATC ''gating criteria'' as required pursuant to the temporary waiver granted in 2008.

4. *Secondary Market Policies and MSS Spectrum.* Currently, the Commission's secondary markets spectrum leasing framework, which applies to terrestrial Wireless Radio Services licenses, does not extend to ATC uses of MSS spectrum. In the *Secondary Markets First Report and Order* adopted in 2003, the Commission established policies and rules by which terrestrially-based Wireless Radio Service licensees could lease some or all of the spectrum usage rights associated with their licenses to third party spectrum lessees, which could then provide wireless services consistent with the underlying license authorization. 68 FR 66232 (November 25, 2003). The Commission provided for two different types of spectrum leasing arrangements for Wireless Radio Services: Spectrum manager leasing arrangements and *de facto* transfer leasing arrangements. Spectrum manager leasing arrangements require the licensee to maintain an active role in ensuring compliance with applicable Commission policies and rules but do not involve a transfer of *de facto* control under 47 U.S.C. 310(d), while *de facto* transfer leasing arrangements involve a transfer of *de facto* control and require Commission approval. In establishing these secondary market policies, the Commission sought to promote more efficient, innovative, and dynamic use of the spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, promote competition among terrestrial wireless service providers, and eliminate regulatory uncertainty surrounding terrestrial spectrum leasing arrangements. At that time, however, the Commission decided not to extend these spectrum leasing policies and rules to satellite services. In particular, the Commission recognized that there already was a well-established set of policies and rules in effect for satellite-capacity transponder leasing, the kinds of leasing arrangements that were occurring in the context of satellite services. Satellite-capacity transponder leasing arrangements differ from spectrum leasing arrangements. Among other things, satellite-capacity transponder leasing does not involve the leasing of spectrum. Subsequently, the Commission extended the leasing framework to additional Wireless Radio Services and to Public Safety services, as well as to other terrestrial spectrum bands that became available.

5. More recently, as ATC services have begun to develop, the Commission has drawn guidance from the Wireless Radio Services secondary market leasing policies. In 2008, the Commission determined that its ATC policies specifically contemplated that MSS licensees could lease access to spectrum to third-party terrestrial providers so long as the requisite ATC gating requirements are met. Furthermore, the Commission found in one case that the particular ATC spectrum leasing arrangement at issue—which the parties had directly modeled on the requirements for spectrum manager leasing arrangements already available to terrestrial wireless services—was consistent with Commission policy, including the statutory requirement relating to transfers of control under 47 U.S.C. 310(d) that applied to Wireless Radio Services under the secondary market policies. Specifically, the Commission found that the leasing arrangement was consistent with a spectrum manager leasing arrangement under its spectrum leasing policies for Wireless Radio Services. Thus, even though the Commission did not adopt the terrestrial Wireless Radio Services spectrum leasing policies and rules for MSS/ATC spectrum leasing arrangements in a rulemaking context, it nonetheless applied the statutory interpretation relating to those policies and rules to the particular lease of MSS spectrum associated with an ATC authorization.

II. Discussion

A. Co-Primary Allocation of the MSS 2 GHz Band for Terrestrial and Fixed Services

6. As proposed in the *MSS NPRM,* we add Fixed and Mobile allocations to the 2000–2020 MHz and 2180–2200 MHz band. These allocations will be co-primary with the existing Mobile Satellite allocation. By adding these allocations to the band, we will be in a position to provide greater flexibility for use of this spectrum in the future. In addition, this change in allocation will bring our allocations for the band into harmony with the International Table of Allocations. We take no action on the proposal in the *MSS NPRM* that, in the event that a 2 GHz MSS license is returned or cancelled, the spectrum covered by the license should not be assigned to the remaining MSS licensee or made available to a new MSS licensee.

7. Our proposal to add Fixed and Mobile allocations to the 2 GHz MSS band received wide support from both satellite and terrestrial wireless licensees. Only Boeing opposed the proposal. Boeing argues that adding this allocation will undermine the ability of 2 GHz MSS licensees to provide service in rural areas, provide valuable service to public safety, and assist in disaster recovery. Boeing also points out that keeping MSS primary in the 2 GHz MSS band promotes the goal of international

harmonization with respect to satellite services. Boeing also claims that MSS networks provide the only means to create a next generation air traffic management (ATM) communication, navigation, and surveillance infrastructure. Boeing explains that it obtained a 2 GHz MSS license in 2001 with a goal of developing such a system but that economic conditions and other factors thwarted the plan. Boeing still believes that development of an ATM system is critical to the future of aviation.

8. We agree that MSS networks are a necessary and critical part of this nation's communications infrastructure, and serve an important role in meeting the needs of rural areas, the public safety community, and disaster recovery, but conclude that these needs can continue to be satisfied under the rules we adopt. MSS remains co-primary in the 2 GHz MSS band, which is consistent with international allocations. As we stated in the *MSS NPRM,* the addition of Fixed and Mobile allocations to the 2 GHz MSS band is merely a first step toward providing flexibility to allow greater use of the band for mobile broadband. The existing service rules that permit MSS and ATC operation in the band will not be altered solely by the addition of Fixed and Mobile allocations to the band. Both of the MSS licensees in the band will continue to operate under the terms of their existing licenses and must comply with all of the Commission's satellite and ATC rules. Furthermore, we are not altering the allocation for the Big LEO band or the L-band.

9. As to the development of an ATM system, we express no opinion as to the need for such a system, whether it should be satellite-based, or whether the 2 GHz band is a suitable location for it. As a practical matter, we note that Boeing has returned its 2 GHz MSS license. At the same time, there is evidence of exploding demand for spectrum for mobile broadband networks. Given all of the foregoing, we believe that adding Fixed and Mobile allocations to the 2 GHz MSS band will provide additional flexibility to meet this demand in the future and therefore is in the public interest.

10. We also modify three footnotes to the U.S. Table to be consistent with this change in allocation. Footnote US380 permits MSS operators to operate ATC in conjunction with MSS networks despite the fact that these bands have not been allocated for Fixed and Mobile uses. Because we have now added Fixed and Mobile allocations to the 2000–2020 MHz and 2180–2200 MHz band, US380 is no longer needed for this band. We amend footnote US380 to remove this band while keeping US380 in place for the MSS Big LEO and L-bands. Two footnotes, NG156 and NG168 permit certain Broadcast Auxiliary Service (BAS) and Fixed Service (FS) licensees, respectively, to continue to operate on a primary basis until December 9, 2013 (the sunset date for the band). Because the relocation of the BAS incumbents out of the 2000–2020 MHz band has been completed, footnote NG156 which addresses the status of the BAS incumbents is no longer needed. Therefore, we remove footnote NG156 from the U.S. Allocation Table. We amend footnote NG168 to clarify that existing Fixed and Mobile operations in the 2180–2200 MHz band (*i.e.* the pre-existing FS licensees) shall become secondary after the band sunset date while ATC operations by MSS will continue to be permitted on a primary basis after the sunset date.

11. In sum, we find that adding co-primary Fixed and Mobile allocations along with the MSS allocation in the 2 GHz band serves the public interest. Our actions bring the allocations into harmony with the international allocations. We also lay the foundation for more flexible use of the band in the future, thereby promoting investment in the development of new services and additional innovative technologies. In adding these co-primary allocations and in applying certain secondary market spectrum leasing rules to ATC leasing arrangements we have not altered in any way the existing ATC service rules and policies that the Commission previously adopted to guard against harmful interference. Furthermore, we conclude that adding co-primary Fixed and Mobile allocations in this band will not result in harmful interference, and would not inevitably lead to uses that would result in harmful interference. Finally, having added co-primary Fixed and Mobile allocations to the 2 GHz band, we anticipate issuing a notice of proposed rulemaking on subjects raised in the *MSS NOI,* including possible service rule changes that could increase investment and utilization of the band in a manner that further serves the public interest. We expect the staff will take advantage of industry technical expertise as it develops options, which may include potential synergies with neighboring bands, to inform our decision making process going forward.

B. Applying Terrestrial Secondary Market Spectrum Leasing Policies to ATC Spectrum Leasing Arrangements

12. As proposed in the *MSS NPRM,* we extend the Commission's general secondary market spectrum leasing policies, procedures, and rules to ATC spectrum leasing arrangements. As we discussed in the *MSS NPRM,* recent and planned near-term developments in the use of MSS spectrum for the provision of terrestrial services are increasing the potential that these services will become sufficiently similar to the services offered in the overall market of mobile terrestrial wireless services to enhance competition in this larger mobile marketplace. Accordingly, we find that a common set of policies, procedures, and rules—where consistent with ATC policies and rules—will promote greater consistency, regulatory parity, predictability, and transparency with respect to spectrum leasing arrangements involving terrestrially-based mobile service offerings.

13. The record contains widespread support for this action. Indeed, every commenter that addressed the issue supported the extension of the general secondary markets spectrum leasing rules and policies to ATC. For example, the Telecommunications Industry Association asserts that applying the Commission's secondary market rules and policies to ATC will encourage innovative arrangements and partnerships that will speed the development and deployment of wireless broadband to rural and other areas. Additionally, Inmarsat states that spectrum leasing arrangements would facilitate the ability of MSS operators to deploy ATC, which would increase the availability of terrestrial broadband services and advance the public interest. Echostar notes that ''efficient secondary markets * * * promote spectrum efficiency and create opportunities to maximize use of spectrum for mobile broadband services.'' We agree that applying these spectrum leasing policies and rules will help facilitate efficient and innovative new arrangements for using spectrum, including in both urban and rural areas. Moreover, commenters assert that by extending these spectrum leasing policies, the Commission would establish regulatory predictability and parity between similarly situated services.

14. *Spectrum Manager Leasing Arrangements.* Consistent with the Commission's ATC policies and rules, and the ancillary nature of ATC, we determine that MSS licensees and spectrum lessees may only enter into spectrum manager leasing arrangements. As discussed in the *MSS NPRM,* the Commission established several ''gating criteria'' that MSS operators must meet in order to be authorized to operate ATC stations. At their core, these gating criteria require the MSS licensee to provide substantial satellite service, as

well as an integrated satellite/terrestrial service. We conclude that ATC spectrum manager leasing arrangements, which would require the MSS licensee to maintain an active role in ensuring compliance with all of these requirements, are the best means of ensuring that terrestrial leasing arrangements in MSS spectrum remains consistent with the underlying ATC policies and rules. We believe that the spectrum manager leasing rules will enable significant flexibility for the provision of terrestrial mobile broadband as part of an MSS/ATC service offering.

15. Under a spectrum manager leasing arrangement, the MSS licensee retains *de facto* control of the MSS spectrum at all times, remaining primarily responsible for ensuring compliance with the underlying ATC requirements (including the underlying authorization) as well as for the spectrum lessee's compliance with those requirements. This responsibility includes maintaining reasonable operational oversight over the leased spectrum so as to ensure that each lessee complies with all applicable technical and service rules, including frequency coordination requirements and resolution of interference-related matters. Permitting only spectrum manager leasing arrangements ensures that the MSS licensee retains primary responsibility for MSS, including the provision of substantial satellite service (including all gating criteria) as well as the coordination of any terrestrial use with satellite use so that the terrestrial use is consistent with the MSS service and interference rules. Requiring spectrum manager leasing arrangements also address the concerns, expressed by Inmarsat, that the MSS licensee should retain ultimate control over the use of MSS spectrum in order to enhance its ability to coordinate operations and avoid harmful interference.

16. *De facto* transfer leasing arrangements, in contrast, would effectively transfer primary responsibilities for meeting these obligations to the spectrum lessee(s), which are not in a position to meet many of the underlying obligations of the MSS license, such as meeting the gating criteria obligations to provide substantial satellite service and to provide integrated mobile satellite/terrestrial service. Transferring *de facto* control over the use of the spectrum to a spectrum lessee also could sever the relationship between the provision of the satellite and the terrestrial service. We are not persuaded by the commenters that assert generally that we should permit MSS licensees to enter into *de facto* transfer leasing arrangements, but do not address how such arrangements would be fully consistent with the ATC gating criteria.

17. We also will apply the general policies and rules that pertain to the spectrum manager leasing arrangements, as set forth in the Commission's secondary market policies and rules. Accordingly, we agree with TerreStar that an MSS licensee may lease spectrum for ATC use in varying amounts and in any geographic area or at any site encompassed by the license when entering into a spectrum manager leasing arrangement.

18. *Notification procedures.* MSS licensees and potential spectrum lessees seeking to enter into spectrum manager leasing arrangements will be required to file the same information and certifications as required under the Commission's rules for Wireless Radio Service. As proposed in the *MSS NPRM,* we will require that leasing parties submit specified information and certifications (including information about the parties, the amount and geographic location of the spectrum involved, and other overlapping terrestrial-use spectrum holdings of the parties) to the Commission in advance of any operations that would be permitted pursuant to the proposed transaction. As is required with respect to a spectrum leasing arrangement involving Wireless Radio Services, each party to a proposed ATC spectrum manager leasing arrangement must have correct and up-to-date ownership information on file with the Commission (using FCC Form 602) as of the date that the notification of the spectrum manager leasing arrangement is filed.

19. As with spectrum manager leasing arrangements involving Wireless Radio Services, to the extent a proposed ATC spectrum manager leasing arrangement does not raise potential public interest concerns, the transaction would be subject to immediate processing, whereas to the extent potential public interest concerns were raised (*e.g.,* potential competitive harms, as discussed below, or foreign ownership concerns) the transaction would be subject to streamlined procedures as the Commission evaluated whether the public interest would be served by the proposed transaction. We hereby delegate to the Wireless Telecommunications Bureau (WTB) and the International Bureau (IB) the authority to resolve implementation and administrative issues relating to these notification requirements, which will include revisions to FCC Form 608 and the Commission's Universal Licensing System (ULS).

20. *Potential competitive concerns.* Assessing potential competitive effects of proposed secondary market transactions is an important element of the Commission's policies to promote competition and guard against the harmful effects of anticompetitive behavior. As the Commission recognized in the *Secondary Markets First Report and Order,* spectrum leasing arrangements potentially raise competitive concerns, and the Commission applied its general competition policies for terrestrially-based mobile services to these arrangements. Specifically, the Commission observed that it may consider the use of leased spectrum as a relevant factor when examining marketplace competition. In assessing the potential competitive effects of spectrum leasing arrangements, the Commission stated that it would determine, based on a case-by-case review of all relevant factors, whether services provided over both leased and licensed spectrum in specific product and geographic markets should be taken into account.

21. We conclude that spectrum leasing arrangements involving ATC also potentially raise competitive concerns, as several commenters assert. As we discussed above, technological advances will enable MSS licensees and their spectrum lessees to use ATC authority to provide mobile services similar to those provided by terrestrial mobile providers. While we recognize that in the past the Commission has not viewed MSS as a substitute for terrestrial mobile services, we have recently observed that the mobile satellite service industry currently is undergoing major technological advances and structural changes. In particular, we note that several MSS providers have, at various times, articulated their plans to offer high-speed data services, especially in connection with terrestrial networks using their ATC authority, and that such services in the future could affect, and potentially enhance, competition in the provision of terrestrial mobile services. Spectrum lessees using ATC therefore appear increasingly likely to provide services that could affect competition in the mobile telephony/broadband services product market. Accordingly, to the extent that we determine that particular ATC spectrum leasing arrangements can be used to provide such services, the procedures we will adopt allow us to assess these arrangements in the context of our existing competitive analysis framework

for mobile telephony/broadband services, consistent with our general authority to ensure that the public interest would be served by proposed transactions. We note that these procedures also enable us to assess each proposed spectrum manager leasing arrangement to determine whether any other type of competitive issue might arise in the context of the MSS/ATC transaction, such as leasing arrangements between different MSS operators.

22. *Existing ATC spectrum leasing arrangements.* We conclude that MSS licensees and ATC lessees must conform any existing spectrum leasing arrangement to the spectrum leasing policies adopted in this *Report and Order.* We note that providing this information and submitting the notification is consistent with the Commission's approach when it first evaluated an MSS/ATC spectrum leasing arrangement, as discussed above. We direct parties to submit notification to the Commission of any existing MSS/ATC spectrum leasing arrangements no later than thirty (30) days of the effective date of this *Report and Order.* This would include any spectrum leasing arrangement that parties may seek to enter prior to the effective date of the rules adopted herein.

23. *U.S. GPS Industry Council's Request.* In its comments, the U.S. GPS Industry Council expresses concern about the need to protect the Radionavigation-Satellite Service (RNSS) operating in the 1559–1610 MHz band, including the Global Positioning System (GPS), from interference from terrestrial operations in the MSS bands. The U.S. GPS Industry Council is concerned that applying existing secondary market rules to the use of MSS spectrum could lead to denser deployment of terrestrial services using MSS spectrum, which in turn would increase the probability of harmful interference to GPS. It also requests that the Commission codify the technical operating parameters applicable to MSS licensees under their respective ATC authorizations to ensure greater clarity and certainty about the interference rules applicable to secondary market arrangements. The U.S. GPS Industry Council expresses particular concern about potential interference to GPS that could result from adjacent terrestrial operations by an MSS L-band operator (LightSquared Subsidiary LLC). The National Telecommunications and Information Administration (NTIA) also has expressed concern about the potential for adverse impact of ATC operations in the L-band on GPS and other Global Navigation Satellite System (GNSS) receivers.

24. The addition of co-primary Fixed and Mobile allocations to the MSS 2 GHz band and the secondary market policies and rules that we adopt herein do not in any way change the obligations that attach to each MSS licensee to comply with the applicable technical and operational rules for ATC operations pursuant to its license. Under the spectrum manager leasing arrangements that we are permitting, the MSS licensee continues to have primary responsibility for ensuring compliance of any terrestrial operations with the obligations associated with its authorization, and each spectrum lessee would be obligated to ensure its operations comply with the particular technical and operational requirements applicable to the MSS licensee from which it is leasing spectrum.

25. To the extent that potential interference concerns arise with respect to MSS/ATC operations in particular MSS bands, concerns will be addressed on a licensee and band-specific basis. We note that, as regards the interference concerns raised by the U.S. GPS Industry Council and NTIA about LightSquared's operations in the MSS L-band, LightSquared is working with the GPS community by establishing a technical working group to fully study the potential for harmful interference from its base station operations in the MSS L-band spectrum to GPS receivers in the adjacent 1559–1610 MHz band and to identify measures necessary to prevent harmful interference to GPS. Pursuant to the January 26, 2011 *LightSquared Waiver Order,* LightSquared cannot commence offering a commercial terrestrial service on its MSS L-band frequencies until the Commission, after consultation with NTIA, concludes that the harmful interference concerns have been resolved.

26. We emphasize that responsibility for protecting services rests not only on new entrants but also on incumbent users themselves, who must use receivers that reasonably discriminate against reception of signals outside their allocated spectrum. In the case of GPS, we note that extensive terrestrial operations have been anticipated in the L-band for at least 8 years. We are, of course, committed to preventing harmful interference to GPS and we will look closely at additional measures that may be required to achieve efficient use of the spectrum, including the possibility of establishing receiver standards relative to the ability to reject interference from signals outside their allocated spectrum.

27. *Foreign Ownership.* T-Mobile requests that, in applying the Commission's secondary markets spectrum leasing rules and policies to ATC, we extend the availability of the immediate processing/approval procedures to prospective lessees with indirect foreign ownership exceeding 25 percent, if that ownership has previously been approved by the Commission. We decline to revisit this issue here. T-Mobile's request is a reiteration of similar previous requests, including requests made in the Commission's earlier wireless secondary markets proceeding, which the Commission has denied. This Report and Order neither re-examines the wireless secondary market rules and policies generally nor establishes independent ATC secondary market rules and policies.

III. Procedural Matters

28. *Paperwork Reduction 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).

IV. Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180 MHz *Notice of Proposed Rulemaking and Notice of Inquiry (Notice).* 75 FR 49871 (August 16, 2010). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

30. This *Report and Order* continues the Commission's efforts to enhance competition and speed the deployment of terrestrial mobile broadband. While ensuring the United States maintains robust mobile satellite service capabilities, in the *Report and Order* the Commission takes steps to make additional spectrum available for new

investment in terrestrial mobile broadband networks.

31. The *Report and Order* takes two actions. First, we add co-primary Fixed and Mobile allocations to the Table of Frequency Allocations for the 2 GHz band, consistent with the International Table of Allocations. Under this allocation, Fixed and Mobile services will have equal status to MSS. This allocation modification is a precondition for more flexible licensing of terrestrial services within the band and lays the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. The *Report and Order* does not change the status of the existing MSS licensees nor grant authority for terrestrial operations in the band beyond what is currently permitted under the ATC rules.

32. Second, the Report and Order applies the Commission's secondary markets policies and rules applicable to terrestrial wireless radio services to spectrum leasing arrangements involving the use of MSS bands for terrestrial services. Specifically, the Report and Order specifies requirements for licensees entering into spectrum manager leasing arrangements involving ATC, which will increase competition, improve spectrum efficiency, and allow small entities greater access to spectrum.

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

33. There were no comments filed that specifically addressed the rules and policies presented in the IRFA.

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

34. 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 rules and policies adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

35. *Satellite Telecommunications and All Other Telecommunications.* 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.

36. 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 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.

37. 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.

38. *Mobile Satellite Service Carriers.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $15 million or less in annual revenues. Currently, the Commission's records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services. Nonetheless, it might be possible that some are small entities affected by this *Report and Order* and therefore we include them in this section of the FRFA.

39. *Wireless Telecommunications Carriers (except satellite).* The *Report and Order* applies the Commission's secondary market policies and rules to terrestrial service in the MSS bands. We cannot predict who may in the future lease spectrum for terrestrial use in these bands. In general, any wireless telecommunications provider would be eligible to lease spectrum from the MSS licensees. Since 2007, the SBA has recognized 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 this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

40. This Report and Order applies the Commission's secondary markets policies and rules applicable to terrestrial wireless services to spectrum management leasing transactions

involving the use of MSS bands for terrestrial wireless services. Leasing parties will be required to submit specified information and certifications (including information about the parties, the amount and geographic location of the spectrum involved, and other overlapping terrestrial-use spectrum holdings of the parties) to the Commission in advance of any operations that would be permitted pursuant to the proposed transaction. These changes affect small and large companies equally. To give these rules any meaning, this information must be generated by small and large entities alike. Otherwise, wireless service providers seeking to lease MSS/ATC spectrum would not have all of the information available to make educated leasing agreements.

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

41. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c)(1)–(c)(4).

42. In the *Report and Order,* we add Fixed and Mobile allocations to the 2000–2020 MHz and 2180–2200 MHz bands. By adding these allocations to the band, we will be in a position to provide greater flexibility for use of this spectrum in the future, which may provide small entities with greater opportunity to lease spectrum. Only one party, Boeing, opposed the proposal, arguing the allocation will undermine the ability of 2 GHz MSS to provide service in rural areas, provide valuable service to public safety, and assist in disaster recovery. Boeing also suggested that keeping MSS primary in the 2 GHz MSS band promotes the goal of international harmonization with respect to satellite services. Boeing also claimed that MSS networks provide the only means to create a next generation air traffic management (ATM) communication, navigation, and surveillance infrastructure. We agree with Boeing that MSS has an important role in meeting the needs or rural areas, the public safety community, and disaster recovery, but conclude that these needs can continue to be satisfied under the rules we adopt. Furthermore, we do not think it prudent to limit future flexible use of the 2 GHz band based on speculation that an ATM communication system may be developed in the band at some unspecified date, particularly in light of evidence of exploding demand for spectrum for mobile broadband networks. We believe that adding Fixed and Mobile allocations to the 2 GHz MSS band will provide additional flexibility to meet this demand in the future and therefore is in the public interest.

43. In the *Report and Order,* we take steps that may affect small entities that provide specific information pursuant to the Commission's secondary market leasing rules and policies. The requirements we adopt will require parties to an MSS/ATC spectrum leasing arrangement to file the same type of notification information that other parties to current spectrum leases must file. MSS licensees that propose to enter into MSS/ATC spectrum manager leasing arrangements must file the FCC Form 608. Additionally, all parties to such a proposed spectrum manager leasing arrangement must submit an FCC Form 602, which details ownership information, to the extent that a current version of this form is not already on file with the Commission. The extension of secondary markets rules and policies to MSS/ATC spectrum will promote competition in wireless terrestrial broadband and will benefit small entities in their efforts to compete against other wireless service providers, both large and small, in the provision of wireless broadband services. We believe that, on balance, the benefits to small entities of our actions in the *Report and Order* far outweigh any burdens this order places on small entities.

44. The record makes clear that broad support exists for extending the Commission's secondary markets rules and policies to MSS/ATC spectrum. Our actions in the *Report and Order* should benefit wireless broadband service providers seeking additional terrestrial spectrum, many of which may be small entities, by providing access to an increased amount of spectrum. Our actions benefit the public interest by promoting competition, innovation, and investment.

45. In extending the Commission's secondary markets rules and policies to MSS/ATC spectrum, we limit that extension to spectrum manager spectrum leasing arrangements. While several parties recommend we allow both spectrum manager and *de facto* transfer spectrum leasing arrangements, we reject those arguments. *De facto* transfer leasing arrangements would effectively transfer primary responsibilities for meeting the obligations of the MSS licensee to the spectrum lessee(s), which are not in a position to meet many of the underlying obligations of the MSS license authorization, such as meeting the gating criteria obligations to provide substantial satellite service and to provide integrated mobile satellite/terrestrial service. Transferring *de facto* control over the use of the spectrum to a spectrum lessee also could sever the relationship between the provision of the satellite and terrestrial service. Thus, we do not extend *de facto* transfer spectrum leasing arrangements to the MSS/ATC spectrum.

V. Report to Congress

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

VI. Ordering Clauses

47. Accordingly, it is ordered, that pursuant to sections 1, 4(i) and (j), 301, 303, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, and 310, this *Report and Order* is adopted.

48. It is further ordered, that pursuant to the authority contained in sections 1, 4(i) and (j), 301, 303, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, and 310, the Commission's rules are amended.

49. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

List of Subjects

47 CFR Parts 1 and 25

Administrative practice and procedure, Communications common

carriers, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

47 CFR Part 2

Communications equipment, Disaster assistance, Radio, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 25 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.9001 is amended by revising paragraph (a) to read as follows:

§ 1.9001 Purpose and scope.

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements. These policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 25, 26, 27, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

* * * * *

■ 3. Section 1.9005 is amended by revising the introductory text and by adding paragraph (jj) to read as follows:

§ 1.9005 Included services.

The spectrum leasing policies and rules of this subpart apply to the following services, which include Wireless Radio Services in which commercial or private licensees hold exclusive use rights and the Ancillary Terrestrial Component (ATC) of a Mobile Satellite Service:

* * * * *

(jj) The ATC of a Mobile Satellite Service (part 25 of this chapter).

■ 4. Section 1.9020 is amended by revising paragraphs (d)(2)(i) and (e)(2)(i)(A) to read as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(d) * * *

(2) * * *

(i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization, with the following exceptions. A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Educational Broadband Service (*see* § 27.1201 of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements applicable to 47 CFR part 27 services (*see* § 27.12 of this chapter). A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Public Safety Radio Services (*see* part 90, subpart B and § 90.311(a)(1)(i) of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee is an entity providing communications in support of public safety operations (*see* § 90.523(b) of this chapter). A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Mobile Satellite Service with ATC authority (see part 25) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements of paragraphs (d)(2)(ii) and (d)(2)(iv) of this section.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) The license does not involve spectrum that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service), or in the ATC of a Mobile Satellite Service, in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (*see* § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

* * * * *

■ 5. Add § 1.9049 to read as follows:

§ 1.9049 Special Provisions relating to spectrum leasing arrangements involving the Ancillary Terrestrial Component of Mobile Satellite Services.

(a) A license issued under part 25 of the Commission's rules that provides authority for an ATC will be considered to provide ''exclusive use rights'' for purpose of this subpart of the rules.

(b) For the purpose of this subpart, a Mobile Satellite Service licensee with an ATC authorization may enter into a spectrum manager leasing arrangement with a spectrum lessee (*see* § 1.9020). Notwithstanding the provisions of §§ 1.9030 and 1.9035, a MSS licensee is not permitted to enter into a *de facto* transfer leasing arrangement with a spectrum lessee.

(c) For purposes of § 1.9020(d)(8), the Mobile Satellite Service licensee's obligation, if any, concerning the E911 requirements in § 20.18 of this chapter, will, with respect to an ATC, be specified in the licensing document for the ATC.

(d) The following provision shall apply, in lieu of § 1.9020(m), with respect to spectrum leasing of an ATC:

(1) Although the term of a spectrum manager leasing arrangement may not be longer than the term of the ATC license, a licensee and spectrum lessee that have entered into an arrangement, the term of which continues to the end of the current term of the license may, contingent on the Commission's grant of a modification or renewal of the license to extend the license term, extend the spectrum leasing arrangement into the new license term. The Commission must be notified of the extension of the spectrum leasing arrangement at the same time that the licensee submits the application seeking an extended license term. In the event the parties to the arrangement agree to extend it into the new license term, the spectrum lessee may continue to operate consistent with the terms and conditions of the expired license, without further action by the Commission, until such time as the Commission makes a final determination with respect to the extension or renewal of the license.

(2) Reserved.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 7. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Page 36 is revised.

■ b. In the list of United States (US) Footnotes, footnote US380 is revised.

■ c. In the list of non-Federal Government (NG) Footnotes, footnote NG156 is removed and footnote NG168 is revised.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F			1980-2025	NG177	
				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 US393	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347 US393	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388 2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG153 NG178	
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) NG168	Satellite Communications (25) Page 36

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United States (US) Footnotes

* * * * *

US380 In the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, and 2483.5–2500 MHz, a non-Federal licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial component and subject to all applicable conditions and provisions of its MSS authorization.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG168 Except as permitted below, the use of the 2180–2200 MHz band is limited to the MSS and ancillary terrestrial component offered in conjunction with an MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of an MSS authorization. In the 2180–2200 MHz band, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to the mobile-satellite service (MSS); and not later than December 9, 2013, all such facilities shall operate on a secondary basis.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 8. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 9. Section 25.149 is amended by adding paragraph (g) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5./1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

* * * * *

(g) *Spectrum leasing.* Leasing of spectrum rights by MSS licensees or system operators to spectrum lessees for ATC use is subject to the rules for spectrum manager leasing arrangements (*see* § 1.9020) as set forth in part 1, subpart X of the rules (*see* § 1.9001 *et seq.*). In addition, at the time of the filing of the requisite notification of a spectrum manager leasing arrangement using Form 608 (*see* §§ 1.9020(e) and 1.913(a)(5)), both parties to the proposed arrangement must have a complete and accurate Form 602 (*see* § 1.913(a)(2)) on file with the Commission.

[FR Doc. 2011–13379 Filed 5–27–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–210; FCC 11–56]

Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) is correcting a final rule that appeared in the **Federal Register** of May 9, 2011, 76 FR 26641. The document adopts rules to establish the National Deaf-Blind Equipment Distribution Program (NDBEDP) pilot program in accordance with the Twenty-First Century Communications and Video Accessibility Act (CVAA).

DATES: Effective June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2075 or e-mail *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–10228 published in the **Federal Register** on Monday, May 9, 2011, 76 FR 26641, the following correction is made:

§ 64.610 [Corrected]

■ 1. On page 26648, in the second column, paragraph 9, the second sentence of § 64.610(c)(2)(ii) is corrected to read: ''An applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments shall be considered when determining whether the individual is deaf-blind under clauses (c)(2)(i)(B) and (C) of this section.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–12680 Filed 5–27–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 104
Tuesday, May 31, 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.

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB64

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to allow alternative signature methods in addition to the traditional pen-and-ink or '' wet'' signature in order to implement an electronic application process which will eventually eliminate the need to retain paper applications and make the application process more convenient for the individuals filing applications.

DATES: Submit comments on or before August 1, 2011.

ADDRESSES: Address any comments concerning this proposed rule to Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 5(b) of the Railroad Retirement Act (RRA) [45 U.S.C. 231d(b)] provides that an application for any payment under the Act ''shall be made and filed in such manner and form as the Board may prescribe * * *'' Currently, Part 217 of the Board's regulations, which sets out the rules governing applications made under the RRA, anticipates that an application will include a signature on paper, even where the application itself may be completed electronically.

In order to provide better service to our customers, the Board proposes to amend section 217.17 of its regulations in order to allow signature alternatives to the traditional pen-and-ink (''wet'') signature. The Board proposes to change the current title of section 217.17, ''Who may sign an application'' to ''What is an acceptable signature'' and to add a new subsection (f) to describe what may be considered to be an acceptable signature. The amendment would add two different types of acceptable signatures.

The first alternate method of signature that the proposed amendment to section 217.17 would allow is the use of a personal identification number (PIN) assigned by the agency.

The second alternate method is referred to as an ''alternative signature'' or ''signature proxy.'' The purpose of this proposal is to allow signature by attestation. Attestation refers to an action taken by an employee of the Railroad Retirement Board (RRB) to confirm and annotate the RRB records of (1) an applicant's intent to file or complete an application or related form, (2) the applicant's affirmation under penalty of perjury that the information is correct, and (3) the applicant's agreement to sign the application or related form. The Board expects that use of attestation to take RRA applications over the telephone will increase efficiency and be more convenient for RRB customers.

Before deciding to propose this amendment, the Board's Office of Programs obtained information about alternative signature methods used by the Social Security Administration (SSA), since it administers a retirement and disability program comparable to the Board's programs under the Railroad Retirement Act. The Office of Programs also compared the current RRB application taking process with a process using attestation to identify the differences and determine how those differences affect the process. Based on the information obtained from the comparison and from the SSA, it was determined that attestation would reduce our paper flow and handling and would work well in our current environment where the Board's Field Service already completes most applications by telephone.

Under both the current and proposed systems, the RRB claims representative would identify a caller-applicant using our existing protocol and complete an application by interviewing the caller and entering the answers online into the Application Express (APPLE) system. APPLE is an online system that automates the filing of applications for retirement and survivor benefits and forwards the applications to the systems for payment. We now print out a copy of the completed application to send it to the applicant for signature and return. Under attestation, we would instead use defined scripts like SSA uses to confirm the applicant's intent to file; attest to the reply by entering the answer in APPLE; print the cover notice with penalty clause and summary, and review it with the applicant over the telephone; release the case in APPLE for processing after the telephone review of the cover notice is complete; and send the applicant a cover notice and summary to keep. We would advise the applicant to review the cover notice and summary upon receipt, and contact the RRB promptly if the applicant needs to make any corrections.

Attestation would end the return of application documents to our offices, reducing the volume of paper to be sorted, assigned, reviewed, input, scanned and indexed by the RRB.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as amended. Therefore, no regulatory impact analysis is required. There are no changes to the information collections associated with Part 217.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, subchapter B, part 217 of the Code of Federal Regulations as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.17 is amended by revising the section heading and paragraph (a) and adding paragraph (f) to read as follows:

§ 217.17 What is an acceptable signature.

* * * * *

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must sign in his or her own handwriting, except as provided in paragraph (e) or paragraph

(f) of this section. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

* * * * *

(f) An acceptable signature may include:

(1) A handwritten signature that complies with the rules set out in paragraphs (a), (b), (c), (d), or (e) of this section; or

(2) In the case of an application being taken and processed in the Railroad Retirement Board's automated claims system, an electronic signature, which shall consist of a personal identification number (PIN) assigned by the Railroad Retirement Board as described in the application instructions; or

(3) An alternative signature or signature proxy acceptable to the Railroad Retirement Board. An example of an alternative signature is attestation, which refers to the action taken by a Railroad Retirement Board (RRB) employee of confirming and annotating RRB records of the applicant's intent to file or complete an application or related form, the applicant's affirmation under penalty of perjury that the information provided is correct, and the applicant's agreement to sign the application or related form.

* * * * *

Dated: May 20, 2011.

By Authority of the Board.

Steven A. Bartholow,

General Counsel.

[FR Doc. 2011–13056 Filed 5–27–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0211; FRL–9312–8]

Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Interference With Prevention of Significant Deterioration Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a State Implementation Plan (''SIP'') revision submitted by the State of California on November 17, 2007, for the purpose of addressing the ''transport SIP'' provisions of Clean Air Act (''CAA'') section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter (''$PM_{2.5}$'') NAAQS. Section 110(a)(2)(D)(i) of the CAA requires that each SIP contain adequate provisions to prohibit emissions that adversely affect air quality in other States through interstate transport. EPA is proposing a limited approval and limited disapproval of California's SIP revision for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS with respect to the requirement in CAA section 110(a)(2)(D)(i)(II) that each SIP contain adequate measures prohibiting emissions of air pollutants in amounts which will interfere with other States' measures required under title I, part C of the CAA to prevent significant deterioration of air quality. Specifically, EPA is proposing to approve California's SIP revision with respect to those Districts in California that implement SIP-approved permit programs meeting the approval criteria under CAA section 110(a)(2)(D)(i), as discussed in this proposal. EPA is simultaneously proposing to disapprove California's SIP revision with respect to those Districts in California that do not implement SIP-approved permit programs meeting these approval criteria. For any District for which we finalize a disapproval, EPA intends to simultaneously promulgate a limited Federal Implementation Plan (''FIP''), as discussed in this proposal, unless the relevant area is already subject to a FIP.

DATES: Written comments must be received on or before June 30, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2011–0211, by one of the following methods:

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

2. *E-mail: mays.rory@epa.gov.*

3. *Fax:* 415–947–3579.

4. *Mail or deliver:* Rory Mays (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3227, *mays.rory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone [1] and

[1] *See* 62 FR 38856. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). 40 CFR part 50.10. The 8-hour ozone standard is met when the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentrations is 0.08 ppm or less (*i.e.,* less than 0.085 ppm based on the rounding convention in 40 CFR part 50 Appendix I). This 3-year average is referred to as the ''design value.''

fine particulate matter[2] (''$PM_{2.5}$''). This proposed action is in response to the promulgation of these standards (the ''1997 8-hour ozone NAAQS'' and ''1997 $PM_{2.5}$ NAAQS''). This proposed action does not address the requirements of the 2006 $PM_{2.5}$ NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in future actions.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions.

The transport SIP provisions in section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the third element of section 110(a)(2)(D)(i), which requires that each SIP contain adequate measures to prohibit emissions of air pollutants from sources within the State in amounts that will interfere with any other State's measures required under title I, part C of the CAA to prevent significant deterioration of air quality. We refer to this requirement as ''element (3)'' of section 110(a)(2)(D)(i).

On August 15, 2006, EPA issued guidance (herein ''2006 Guidance'') to assist States and EPA Regional offices in developing and evaluating, respectively, transport SIPs for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.[3] As to element (3) of section 110(a)(2)(D)(i), the 2006 Guidance states that this requirement may be met by the State's confirmation in a SIP submission that major sources and major modifications in the State are subject to Prevention of Significant Deterioration (''PSD'') and Nonattainment New Source Review (''NNSR'') programs that implement current requirements.[4]

The PSD and NNSR permit programs require preconstruction permits to protect the air quality within each State and are designed to prohibit construction of new major sources and major modifications at existing major sources from contributing to nonattainment in surrounding areas, including nearby States. Specifically, a PSD permit may not be issued unless the new or modified source demonstrates that emissions from the construction or operation of the facility will not cause or contribute to air pollution in any area that exceeds any NAAQS or any maximum allowable increase (*i.e.*, PSD increment). 42 U.S.C. 7475(a)(3); 40 CFR 51.166(k). An NNSR permit may not be issued unless the new or modified source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is designated nonattainment, consistent with reasonable further progress toward attainment. 42 U.S.C. 7503(a)(1); 40 CFR 51.165(a)(3).

Because the PSD and NNSR permitting programs require a demonstration that new or modified sources will not cause or contribute to air pollution in excess of the NAAQS in neighboring States or that sources in nonattainment areas procure offsets, States may satisfy the requirement of section 110(a)(2)(D)(i)(II) regarding measures to prevent significant deterioration of air quality by submitting SIPs confirming that major sources and major modifications in the State are subject to PSD and NNSR programs that implement current requirements.

As such, we have evaluated California's PSD and NNSR preconstruction permitting programs to determine whether these programs implement the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In addition, because stationary sources of greenhouse gas (''GHG'') emissions at or above certain thresholds are now subject to PSD permitting requirements, we have evaluated California's PSD programs for compliance with the requirements for GHG PSD authorities.[5] Our evaluation is summarized below (see section III of this proposed rule) and described in more detail in the technical support document (''TSD'') for this proposed rule, which is available in the docket for this action.

II. What is the State process to submit these materials to EPA?

CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

On November 16, 2007, the California Air Resources Board (''CARB'') submitted the State Strategy for California's 2007 State Implementation Plan to attain the 1997 8-hour ozone and $PM_{2.5}$ NAAQS (''2007 State Strategy'').[6] Appendix C of the 2007 State Strategy, as modified by Attachment A,[7] contains California's SIP revision to address the transport SIP requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS (''2007 Transport SIP''). CARB's November 16, 2007 submittal includes public process documentation for the 2007 State Strategy, including the 2007 Transport SIP. In addition, the SIP revision includes documentation of a duly noticed public hearing held on September 27, 2007 on the proposed 2007 State Strategy.

We find that the process followed by CARB in adopting the 2007 Transport SIP complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

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[2] *See* 62 FR 38652. The level of the 1997 $PM_{2.5}$ NAAQS are 15.0 μg/m^3 (annual arithmetic mean concentration) and 65 μg/m^3 (24-hour average concentration). 40 CFR part 50.7. The annual standard is met when the 3-year average of the annual mean concentrations is 15.0 μg/m^3 or less (*i.e.,* less than 15.05 μg/m^3 based on the rounding convention in 40 CFR part 50 Appendix N Section 4.3). The 24-hour standard is met when the 3-year average annual 98th percentile of 24-hour concentrations is 65 μg/m^3 or less (*i.e.,* less than 65.5 μg/m^3 based on the rounding convention in 40 CFR part 40 Appendix N Section 4.3). *Id.* These 3-year averages are referred to as the annual $PM_{2.5}$ and 24-hour $PM_{2.5}$ ''design values,'' respectively.

[3] Memorandum from William T. Harnett, Director, Air Quality Policy Division, OAQPS, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' August 15, 2006.

[4] *Id.* at 6.

[5] For explanation of the GHG PSD permitting requirements, *see* ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 31514 (June 3, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Findings of Substantial Inadequacy and SIP Call; Final Rule,'' 75 FR 77698 (December 13, 2010); ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010).

[6] *See* transmittal letter dated November 16, 2007, from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, with enclosures, and CARB Resolution No. 07–28 (September 27, 2007).

[7] *See* ''Technical and Clarifying Modifications to April 26, 2007 Revised Draft Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan and May 7, 2007 Revised Draft Appendices A through G,'' included as Attachment A to CARB's Board Resolution 07–28 (September 27, 2007).

III. What is EPA's evaluation of the State's submission?

California's 2007 Transport SIP states that all areas of California are subject to some form of preconstruction permitting program for ozone and $PM_{2.5}$ and that "[t]hese rules are as stringent, or more stringent, than the federal preconstruction programs (PSD and NNSR)." [8] The submittal also states that California is on track to submit SIP revisions to meet the PSD and NNSR requirements of the Phase 2 Implementation Rule for the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) ("Phase 2 Rule") and is implementing preconstruction programs for $PM_{2.5}$ in accordance with EPA's October 23, 1997 guidance memorandum entitled "Interim Implementation of New Source Review Requirements for $PM_{2.5}$" ("PM_{10} Surrogate Policy"). Finally, the submittal includes a list of local air districts that implement the PSD and NNSR programs throughout the State. In sum, the 2007 Transport SIP asserts that California's existing PSD and NNSR programs contain adequate measures to prohibit emissions of air pollutants which will interfere with any other State's required measures under title I, part C of the CAA, to prevent significant deterioration of air quality, for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

The 2007 Transport SIP provides little information to support the State's assertions regarding the adequacy of its existing PSD and NNSR permit programs. Furthermore, the 2007 Transport SIP relied solely on EPA's 2006 Guidance and, therefore, did not fully address certain implementation requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS that are now relevant to our evaluation, as discussed further below and in our TSD. We have, therefore, conducted an independent evaluation of California's PSD and NNSR programs in relation to specific implementation provisions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS that are necessary for approval of the 2007 Transport SIP. We conducted this evaluation for each of the 35 permitting authorities ("Districts") [9] in California, which cover the entire geographic extent of the State excluding Indian country.[10] The details of our evaluation are provided in the TSD for this proposed rule.

A. Evaluation of Measures To Prevent Significant Deterioration for 1997 8-Hour Ozone NAAQS

Fifteen air quality planning areas in California are designated nonattainment for the 1997 8-hour ozone NAAQS. *See* 40 CFR 81.305. Twenty Districts implement preconstruction permit programs in these 15 nonattainment areas. *See* TSD at 9–12. Thirteen air quality planning areas in California are designated unclassifiable/attainment for the 1997 8-hour ozone standard. *See* 40 CFR 81.305. Twenty-three Districts implement preconstruction permit programs in these 13 unclassifiable/attainment areas. *See* TSD at 12, 13.

1. 8-hour Ozone Nonattainment Areas

The Phase 2 Rule requires specific revisions to States' NNSR SIPs to implement the requirements of the CAA Amendments of 1990, as applicable based on each area's classification for the 8-hour ozone standard. *See* 70 FR 71612 at 71675, 71698–71699. Specifically, the Phase 2 Rule requires that NNSR SIPs apply all NNSR requirements for major sources of volatile organic compounds (VOCs) to major sources of nitrogen oxides (NO_X) as well, except where a NO_X waiver applies under section 182(f) of the Act. 40 CFR 51.165(a)(8). In addition, NNSR SIPs must include provisions establishing the applicable major stationary source thresholds, significant emissions rates, and offset ratios for VOCs and NO_X based on each area's classification for the 8-hour ozone NAAQS. 40 CFR 51.165(a)(1)(iv), (a)(1)(v), (a)(1)(x), (a)(8), (a)(9). These SIP revisions were due June 15, 2007. 70 FR at 71683.

Among the 20 Districts that are entirely or partially designated nonattainment for the 1997 8-hour ozone NAAQS, 12 Districts have nonattainment areas classified under subpart 2 of part D, title I of the CAA. The remaining eight Districts and a portion of a ninth District cover areas now referred to as "former subpart 1" nonattainment for the 1997 8-hour ozone NAAQS. *See* 40 CFR 81.305; *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) (vacating certain elements of EPA's Phase 1 ozone implementation rule), *reh'g denied* 489 F.3d 1245.

For the 12 Districts covering subpart 2 nonattainment areas, EPA has reviewed the SIP-approved NNSR rules and determined that all but three of these SIP programs meet the approval criteria discussed above. *See* TSD at 9–11. The three Districts in which the SIP-approved NNSR programs do not currently satisfy these program requirements are the Feather River Air Quality Management District ("AQMD"), Placer County Air Pollution Control District ("APCD"), and Sacramento Metropolitan AQMD. These three agencies implement permit programs in the Sacramento Metro ozone nonattainment area, which was initially designated and classified as serious nonattainment for the 1997 8-hour ozone NAAQS. 69 FR 23858 (April 30, 2004).[11]

In separate actions, EPA has proposed to approve NNSR SIP revisions submitted by the Placer County APCD ("Placer"), Feather River AQMD ("Feather River"), and Sacramento Metropolitan AQMD ("Sacramento") to meet the approval criteria discussed above.[12] *See* 76 FR 28944 (May 19, 2011) and 76 FR 28942 (May 19, 2011). We propose to determine that final approval of the required NNSR SIP revisions will address element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS for these Districts. Alternatively, for any of these Districts for which we cannot finalize approval of the required NNSR provisions by our July 10, 2011 Consent Decree deadline [13] for final action on element (3) of the 2007 Transport SIP, we propose to disapprove the 2007 Transport SIP and to promulgate a limited NNSR FIP (for the relevant District) based on Sacramento's Rule 202 and the provisions of 40 CFR part 51, Appendix S identifying the major source threshold, significant emissions rate, and offset ratio applicable to the area's 8-hour ozone classification. EPA would retain authority to implement these

[8] *See* 2007 Transport SIP, Attachment A of 2007 State Strategy at 21–22 (modifying Appendix C of 2007 State Strategy).

[9] Although EPA's air quality designations for California in 40 CFR 81.305 are defined by planning areas, we discuss the relevant PSD and NNSR program requirements as they apply to the local permitting agencies that implement these requirements in each planning area. We use the term "District" throughout this document to refer both to the local agency responsible for issuing PSD/NNSR permits and to the geographic area over which that agency has jurisdiction.

[10] California's SIP obligations under the CAA do not apply in Indian country.

[11] In this action, we are evaluating the NNSR programs for these Districts in accordance with the requirements for "serious" ozone nonattainment areas. We note, however, that EPA reclassified the Sacramento Metro area as a "severe-15" nonattainment area for the 1997 8-hour ozone standard, effective June 4, 2010. 75 FR 24409 (May 5, 2010).

[12] These proposals address the NNSR requirements for "severe" ozone nonattainment areas, which each of these Districts has submitted in advance of the June 4, 2011 submittal deadline established as part of EPA's action to reclassify the Sacramento Metro area from serious to severe-15 nonattainment for the 8-hour ozone standard. *See* 75 FR 24409.

[13] *See WildEarth Guardians* v. *U.S. EPA* (Case No. 4:09–CV–02453–CW), Consent Decree dated November 10, 2009, as amended by *Notice of Stipulated Extensions to Consent Decree Deadlines,* dated April 28, 2011.

requirements for NO_X and VOC emission sources in the relevant Districts (unless and until EPA delegates such authority to the District), while the District would retain authority to continue implementing any existing SIP-approved NNSR requirements. Our TSD describes the limited FIPs that we propose to promulgate for any District for which we cannot finalize approval of the required NNSR SIP revisions by July 10, 2011. *See* TSD at 10, 11.

For the nine Districts covering ''former subpart 1'' nonattainment areas, we have reviewed the existing SIPs and determined that two of the SIP-approved NNSR programs in these areas (for Eastern Kern APCD and San Diego County APCD) implement the 1997 8-hour ozone NAAQS. We propose to determine that the existing NNSR programs for these two former subpart 1 areas are, therefore, adequate to address element (3) of section 110(a)(2)(D)(i) for this standard. *See* TSD at 11.

The remaining seven Districts, which cover five former subpart 1 areas (Central Mountain Counties, Chico, Southern Mountain Counties, Sutter Buttes, and Western Nevada County), are currently subject to the NNSR permitting requirements in The Interpretative Rule (40 CFR part 51 Appendix S), except that the waiver provisions in section VI of 40 CFR part 51 Appendix S no longer apply. See Phase 2 Rule, 75 FR 71612 (November 29, 2005) and *NRDC* v. *EPA,* 571 F. 3d 1245 (DC Cir. 2009) (vacating EPA's elimination of the 18-month limitation in 40 CFR part 52.24(k) with respect to the waiver provisions in section VI of 40 CFR part 51 Appendix S). *See* TSD at 11, 12. The California SIP remains deficient for purposes of 8-hour ozone NNSR requirements in these five former subpart 1 areas that do not yet have approved NNSR programs under part D, title I of the Act. Thus, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS for the seven Districts covering these five former subpart 1 areas.

As discussed above, however, all of these areas are currently subject to NNSR permitting requirements under The Interpretative Rule in 40 CFR part 51, Appendix S, except for the waiver provisions in section VI. These permitting provisions will continue to apply in these areas until the State submits and EPA approves NNSR SIP revisions addressing the subpart 2 NNSR requirements that will apply following EPA's classification of each area under subpart 2. *See* 74 FR 2936 (January 16, 2009) (proposing to require States to submit all required SIP elements for the areas' subpart 2 classifications one year after the effective date of a final rule classifying the areas). We propose to determine that implementation of The Interpretative Rule during this interim period adequately addresses the requirements of element (3) of section 110(a)(2)(D)(i) in these areas and that this discharges EPA's obligation to promulgate a FIP for these limited purposes. This proposal applies only to our FIP obligation in this particular circumstance and should not be construed as an interpretation of our obligations in other nonattainment areas where The Interpretative Rule currently applies under 40 CFR 52.24(k). *See* TSD at 12.

2. 8-Hour Ozone Unclassifiable/Attainment Areas

For areas designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS, the Phase 2 Rule requires revisions to PSD SIPs to require explicit identification of NO_X as an ozone precursor. 70 FR 71612 at 71679, 71699–71700; 40 CFR 51.166(b)(1)(ii), (b)(2)(ii), (b)(23)(i), (b)(49)(i). These SIP revisions were due June 15, 2007. 70 FR at 71683. In areas subject to the Federal PSD program in 40 CFR 52.21, EPA's revisions to 40 CFR 52.21 (including regulation of NO_X as an ozone precursor) became effective January 30, 2006. 70 FR 71612 at 71683.

Fifteen Districts and portions of eight additional Districts in California are designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS. All but four of these Districts are currently subject to the Federal PSD program in 40 CFR 52.21. 40 CFR 52.270. The California SIP remains deficient for purposes of 8-hour ozone PSD requirements in those areas subject to the Federal PSD program. Because EPA has already promulgated a PSD FIP for these areas, however, no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS in these areas.

We reviewed the PSD rules for the four Districts with SIP-approved programs for ozone (Mendocino County AQMD (''Mendocino''), Monterey Bay Unified APCD (''Monterey''), North Coast Unified AQMD (''North Coast''), and Northern Sonoma County APCD (''Northern Sonoma'')). Of these, only Monterey's existing SIP PSD program identifies NO_X as an ozone precursor. We propose to approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS for Monterey. *See* TSD at 12, 13.

The SIP-approved PSD programs for the other three Districts (Mendocino, North Coast, and Northern Sonoma) do not currently identify NO_X as an ozone precursor. However, by direct final rule on May 6, 2011, EPA approved PSD SIP revisions submitted by Mendocino and Northern Sonoma to explicitly identify NO_X as an ozone precursor. *See* 76 FR 26192 and 76 FR 26224 (May 6, 2011). We propose to determine that these PSD SIP revisions satisfy the requirements of element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS in these Districts. If, however, either of these approvals is withdrawn and does not become effective by our July 10, 2011 Consent Decree deadline for final action on element (3) of the 2007 Transport SIP, we propose to disapprove the 2007 Transport SIP for the relevant area and to promulgate a limited PSD FIP based on the provisions of 40 CFR 52.21 identifying NO_X as an ozone precursor. EPA would retain authority to implement the applicable requirements of 40 CFR 52.21 for NO_X emission sources in the relevant area (unless and until EPA delegates such authority to the District), while the District would retain authority to continue implementing any existing SIP-approved PSD requirements. *See* TSD at 13.

Finally, although North Coast has also submitted PSD SIP revisions to address this requirement, among others, we are proposing to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and to promulgate a limited PSD FIP for North Coast because we do not expect to finalize approval of that PSD submittal by our July 10, 2011 Consent Decree deadline for final action on element (3) of the 2007 Transport SIP. Thus, for North Coast, we are proposing to promulgate a limited PSD FIP based on the provisions of 40 CFR 52.21 regulating NO_X as an ozone precursor. EPA would retain authority to implement the applicable requirements of 40 CFR 52.21 for NO_X emission sources in North Coast (unless and until EPA delegates such authority to the District), while the District would retain authority to continue implementing any existing SIP-approved PSD requirements. *See* TSD at 13. This limited FIP would apply only until EPA approves a PSD SIP revision for North Coast addressing this requirement.

B. Evaluation of Measures To Prevent Significant Deterioration for 1997 $PM_{2.5}$ NAAQS

Two air quality planning areas in California (the San Joaquin Valley and the Los Angeles-South Coast Air Basin) are designated nonattainment for the

1997 $PM_{2.5}$ NAAQS. *See* 40 CFR 81.305. Two Districts (San Joaquin Valley APCD and South Coast AQMD) implement preconstruction permit programs in these two nonattainment areas. *See* TSD at 13, 14. Twenty-five air quality planning areas that cover the rest of the State are designated unclassifiable/attainment for the 1997 $PM_{2.5}$ NAAQS. *See* 40 CFR 81.305. Thirty-four Districts implement preconstruction permit programs in these 25 unclassifiable/attainment areas. *See* TSD at 14, 15.

1. $PM_{2.5}$ Nonattainment Areas

For areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS, the NSR Implementation Rule for $PM_{2.5}$, 73 FR 28321 (May 16, 2008) (''$PM_{2.5}$ NSR Rule''), establishes new requirements under 40 CFR part 51.165 for States to include in their SIP-approved NNSR programs to address the $PM_{2.5}$ NAAQS. These NNSR SIP revisions were due May 16, 2011. *See* 73 FR 28321 (May 16, 2008). Under 40 CFR part 52.24(k), during the period of time allowed for States to amend their existing NNSR programs to address the new $PM_{2.5}$ requirements, States are allowed to rely on the procedures under 40 CFR part 51 Appendix S (''The Interpretative Rule'') to issue permits to new or modified major stationary sources proposing to locate in a $PM_{2.5}$ nonattainment area.[14] Both the San Joaquin Valley APCD and South Coast AQMD have confirmed to EPA that they are implementing and will continue to implement the requirements of The Interpretative Rule to any prospective project that triggers $PM_{2.5}$ NSR requirements during this interim period.[15] Thus, with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS, we propose to approve the 2007 Transport SIP for the San Joaquin Valley and the Los Angeles-South Coast Air Basin based on a determination that current implementation of The Interpretative Rule in these areas adequately addresses the 1997 $PM_{2.5}$ NAAQS. *See* TSD at 13, 14.

2. $PM_{2.5}$ Unclassifiable/Attainment Areas

For areas designated unclassifiable/attainment for the 1997 $PM_{2.5}$ NAAQS, the $PM_{2.5}$ NSR Rule establishes new PSD requirements under 40 CFR 51.166 for SIP-approved PSD programs to implement the new $PM_{2.5}$ requirements. These SIP revisions were due May 16, 2011. 73 FR 28321 at 28341 (May 16, 2008). In areas subject to the Federal PSD program in 40 CFR 52.21, the $PM_{2.5}$ requirements of 40 CFR 52.21 became effective July 15, 2008. 73 FR at 28340, 28343.

Thirty-four Districts implement preconstruction permit programs in the 25 air quality planning areas designated as unclassifiable/attainment for the 1997 $PM_{2.5}$ NAAQS. In all but five of these Districts, the Federal PSD program in 40 CFR 52.21 applies. 40 CFR 52.270. Under the $PM_{2.5}$ NSR Rule, the $PM_{2.5}$ requirements of 40 CFR 52.21 became applicable in these 29 Districts as of July 15, 2008, including regulation of SO_2 and NO_X as precursors. *See* 73 FR at 28340, 28343 (May 16, 2008). Because the California SIP remains deficient with respect to PSD requirements in these areas generally, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS for these areas. Because EPA has already promulgated a PSD FIP for these areas, however, no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS in these areas.

The remaining five Districts (Mendocino, Monterey, North Coast, Northern Sonoma, and Sacramento) have SIP-approved PSD programs. We have reviewed the PSD rules for each of these Districts and determined that all five of these SIP PSD programs require owners and operators of sources and permitting authorities to conduct permit-related $PM_{2.5}$ analyses. We propose to approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS for these areas based on a determination that these five SIP-approved PSD programs implement the 1997 $PM_{2.5}$ NAAQS. *See* TSD at 14, 15.

C. Evaluation of Measures To Prevent Significant Deterioration for Greenhouse Gases

Three Districts (Mendocino, North Coast, and Northern Sonoma) were subject to EPA's recently promulgated rule, Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans (''PSD SIP Narrowing Rule'') (75 FR 82536, Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of California's PSD programs for these three Districts to the extent that the programs applied PSD permit requirements to GHG emissions increases from GHG-emitting sources below the thresholds set in EPA's June 3, 2010 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (''Tailoring Rule'') (75 FR 31514). California's 2007 Transport SIP relies, in part, on the PSD programs for Mendocino, North Coast, and Northern Sonoma as of November 2007—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy element (3) of CAA section 110(a)(2)(D)(i). On April 21, May 5, and May 9 of 2011, respectively, Mendocino, Northern Sonoma, and North Coast each submitted letters clarifying that the 2007 Transport SIP should be read with respect to CAA section 110(a)(2)(D)(i)(II) to reflect each of their PSD programs as they are currently Federally approved as a result of the PSD SIP Narrowing Rule, 75 FR 82536 (Dec. 30, 2010).[16] EPA proposes, therefore, to fully approve the 2007 Transport SIP for Mendocino, North Coast, and Northern Sonoma with respect to element (3) of CAA section 110(a)(2)(D)(i).

In addition, Monterey has confirmed that its SIP provides GHG PSD permitting authority at thresholds consistent with the Tailoring Rule. *See* Monterey Bay Unified APCD, Rule 207 (as approved February 4, 2000, 65 FR 5433); *see also* letter dated July 28, 2010, from Richard Stedman, Monterey Bay Unified APCD to Jared Blumenfeld, EPA Region 9, re: ''Implementation of Greenhouse Gas Tailoring Rule.'' We propose, therefore, to fully approve the 2007 Transport SIP for Monterey with respect to element (3) of CAA section 110(a)(2)(D)(i).

Finally, Sacramento was subject to EPA's recently promulgated rule, Findings of Substantial Inadequacy and SIP Call (''PSD GHG SIP Call'') (75 FR 77698, Dec. 13, 2010). In the PSD GHG SIP Call, EPA determined that

[14] Note that for purposes of the 1997 $PM_{2.5}$ NAAQS, the waiver provisions in section VI of 40 CFR part 51 Appendix S expired in October 2006, *i.e.,* 18 months after the April 2005 effective date of each area's designation as nonattainment for this standard. *See* Phase 2 Rule, 75 FR 71612 (November 29, 2005) and *NRDC* v. *EPA,* 571 F. 3d 1245 (DC Cir. 2009) (vacating EPA's elimination of the 18-month limitation in 40 CFR 52.24(k) with respect to the waiver provisions in section VI of 40 CFR part 51 Appendix S).

[15] *See* Policy Memorandum Dated October 27, 2009, ''San Joaquin Valley Unified APCD: Interim New Source Review Requirements for $PM_{2.5}$''; e-mail dated September 4, 2010, from Mohsen Nazemi, South Coast AQMD to Gerardo Rios, U.S. EPA Region 9, ''Appendix S Implementation of NSR for $PM_{2.5}$.''

[16] *See* letter dated April 21, 2011, from Christopher D. Brown, APCO, Mendocino County AQMD, to Gerardo Rios, EPA Region 9, re: ''Clarification of the 2007 Transport SIP as it relates to the PSD Program in Mendocino County''; letter dated May 5, 2011, from Barbara A. Lee, Northern Sonoma APCD, to Gerardo Rios, EPA Region 9, re: ''Clarification of the CA Transport SIP submittal''; letter dated May 9, 2011, from Richard Martin, APCO, North Coast Unified AQMD, to Gerardo Rios, EPA Region 9.

Sacramento's PSD program was substantially inadequate because it did not apply to GHG-emitting sources, and established a deadline of January 31, 2011, for Sacramento to submit its corrective SIP revision. Sacramento submitted the corrective SIP revision on January 28, 2011, and in a separate action EPA has proposed to approve that SIP revision. *See* 76 FR 28942 (May 19, 2011). We propose, therefore, to fully approve the 2007 Transport SIP for Sacramento with respect to element (3) of CAA section 110(a)(2)(D)(i) if Sacramento's corrective SIP revision to address GHG permitting requirements receives final EPA approval.

All other areas in California are subject to current Federal PSD requirements for GHG emissions in 40 CFR 52.21. Because the California SIP remains deficient for purposes of GHG PSD requirements in these areas, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for these areas. Because these areas are already subject to the Federal PSD program, however, we propose to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) in these areas. *See* TSD at 15, 16.

D. Conclusion Regarding Measures To Prevent Significant Deterioration

Based on our review of the NNSR and PSD programs that currently apply in each of California's 35 Districts, we propose a limited approval and limited disapproval of the 2007 Transport SIP with respect to the requirement in CAA section 110(a)(2)(D)(i) to prohibit emissions of air pollutants which will interfere with other States' required measures to prevent significant deterioration of air quality for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

Specifically, we propose the following actions with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. For nine Districts[17] that are designated nonattainment and classified under subpart 2 of part D, title I of the CAA and that have SIP-approved NNSR programs meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For three Districts[18] with nonattainment areas classified under subpart 2 for which NNSR SIP revisions are necessary to meet the approval criteria discussed above, we propose to approve the 2007 Transport SIP if we finalize approval of the required NNSR SIP revisions by our July 10, 2011 deadline for final action on element (3) of the 2007 Transport SIP. Alternatively, for any of these Districts for which we cannot approve the required NNSR SIP revision by our July 10, 2011 deadline, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and to promulgate a limited NNSR FIP addressing the relevant requirements.

For two Districts[19] with ''former subpart 1'' nonattainment areas that implement SIP-approved NNSR programs meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For seven Districts[20] with ''former subpart 1'' nonattainment areas that do not yet have SIP-approved NNSR programs, we propose to disapprove the 2007 Transport SIP but to determine that implementation of The Interpretative Rule during this interim period pending EPA's final subpart 2 classifications of these areas adequately addresses the requirements of element (3) of CAA section 110(a)(2)(D)(i) and, therefore, discharges EPA's obligation to promulgate a FIP for these limited purposes.

For Monterey, which is designated unclassifiable/attainment and has a SIP-approved PSD program meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For two Districts[21] with unclassifiable/attainment areas for which we have recently approved PSD SIP revisions meeting these requirements by direct final rule, we propose to approve the 2007 Transport SIP. If, however, either of these direct final rules is withdrawn and does not become effective by our July 10, 2011 Consent Decree deadline for final action on element (3) of the 2007 Transport SIP, we propose to disapprove the 2007 Transport SIP for the relevant District and to promulgate a limited PSD FIP for that District based on the provisions of 40 CFR 52.21 identifying NO_X as an ozone precursor. EPA would retain authority to implement the requirements of 40 CFR 52.21 in the relevant District, for NO_X emission sources only, unless and until it delegates such authority to the District. For North Coast, we propose to disapprove the 2007 Transport SIP and to promulgate a limited PSD FIP for NO_X emission sources only, as discussed above. For the rest of the State, which is designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS and subject to the Federal PSD program in 40 CFR 52.21, we propose to disapprove the 2007 Transport SIP but to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) because EPA has already promulgated a PSD FIP for these areas.

We propose the following actions with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS. For two Districts[22] that are designated nonattainment, we propose to approve the 2007 Transport SIP based on a determination that implementation of The Interpretative Rule during the SIP-development period adequately addresses the requirements of element (3) of CAA section 110(a)(2)(D)(i). For five Districts[23] that are designated unclassifiable/attainment and that have SIP-approved PSD programs meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For the rest of the State, which is designated unclassifiable/attainment and subject to the Federal PSD program in 40 CFR 52.21, we propose to disapprove the 2007 Transport SIP but to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) because EPA has already promulgated a PSD FIP for these areas.

Finally, with respect to PSD authority to regulate GHGs, we propose to take the following actions. For three Districts[24] that were subject to the PSD SIP Narrowing Rule (75 FR 82536, Dec. 30, 2010), we propose to fully approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) based on the Districts' letters clarifying that the 2007 Transport SIP should be read with respect to CAA section 110(a)(2)(D)(i)(II) to reflect each of their PSD programs as they are currently Federally approved as a result of the PSD SIP Narrowing Rule. For Monterey, which has confirmed that its SIP provides GHG PSD permitting authority at thresholds consistent with

[17] Antelope Valley AQMD, Bay Area AQMD, El Dorado APCD, Imperial County APCD, Mojave Desert AQMD, San Joaquin Valley APCD, South Coast District, Ventura County APCD, and Yolo-Solano AQMD.

[18] Placer County APCD, Feather River AQMD, and Sacramento Metropolitan AQMD.

[19] Eastern Kern APCD and San Diego County APCD.

[20] Amador County APCD, Butte County AQMD, Calaveras County APCD, Feather River AQMD, Northern Sierra AQMD, Mariposa County APCD, and Tuolumne County APCD.

[21] Mendocino County AQMD and Northern Sonoma County APCD.

[22] San Joaquin Valley APCD and South Coast AQMD (excluding Coachella Valley part).

[23] Mendocino County AQMD, Monterey Bay Unified AQMD, North Coast Unified AQMD, Northern Sonoma County APCD, and Sacramento Metropolitan AQMD.

[24] Mendocino County AQMD, Monterey Bay Unified AQMD, and North Coast Unified AQMD.

the Tailoring Rule, we propose to fully approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i). For Sacramento, which was subject to the PSD GHG SIP Call (75 FR 77698, Dec. 13, 2010), we propose to fully approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) if Sacramento's corrective SIP revision to address GHG permitting requirements receives final EPA approval. For all other areas in California, which are subject to the Federal PSD program in 40 CFR 52.21, we propose to disapprove the 2007 Transport SIP but to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) because EPA has already promulgated a PSD FIP for these areas.

For a more detailed discussion of each of these proposed actions, see our TSD.

IV. Proposed Action

As authorized in CAA sections 110(k)(3) and 301(a), EPA is proposing a limited approval and limited disapproval of the 2007 Transport SIP with respect to the requirement in CAA section 110(a)(2)(D)(i) to prohibit emissions of air pollutants in amounts which will interfere with any other State's measures required under title I, part C of the CAA to prevent significant deterioration of air quality. CARB submitted the 2007 Transport SIP on November 17, 2007, to address the requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Specifically, for those Districts in California that implement SIP-approved PSD or NNSR permit programs meeting the approval criteria discussed above, EPA is proposing to approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i). For those Districts in California with SIP-approved PSD or NNSR permit programs that do not meet the approval criteria discussed above, or that are subject to the Federal PSD program in 40 CFR 52.21, EPA is simultaneously proposing to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) and to promulgate limited FIPs as appropriate.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. The 2007 Transport SIP was not submitted to meet either of these requirements. Therefore, if we take final action to disapprove this submittal, no sanctions will be triggered. Disapproval of a required SIP revision also triggers the requirement under CAA section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. For any District in California for which we finalize a disapproval of the 2007 Transport SIP, EPA intends to simultaneously promulgate a limited PSD or NNSR FIP, as discussed in this proposal, unless the relevant area is already subject to the Federal PSD program in 40 CFR 52.21.

This proposed action does not apply to the remaining three elements of CAA section 110(a)(2)(D)(i) regarding significant contribution to nonattainment in any other State, interference with maintenance in any other State, and interference with measures required to protect visibility in any other State. In separate actions, EPA has fully approved the 2007 Transport SIP for purposes of these three additional elements of CAA section 110(a)(2)(D)(i). *See* Final Rule signed May 9, 2011, ''Approval and Promulgation of Air Quality Implementation Plans; State of California; Regional Haze State Implementation Plan and Interstate Transport Plan; Interference with Visibility Requirement''; Final Rule signed May 10, 2011, ''Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference with Maintenance Requirements.''

EPA is soliciting public comments on this proposal and will accept comments until the date noted in the **DATES** section above.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or another statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Although this rule may eventually lead to Federal permitting requirements for a handful of sources, EPA believes that in such an event, there will not be a significant economic impact on the potentially affected sources and that any such impacts would not affect a substantial number of sources, regardless of size. In this proposal, EPA is not proposing any requirements beyond those with which existing sources are already required to comply.

In the case of Mendocino and Northern Sonoma, EPA has already separately approved, by direct final rule, the SIP revisions necessary to make NOx a precursor for ozone under the SIP-approved PSD program. For these areas, EPA is only proposing a narrow FIP to take effect in the event that EPA receives adverse comment that require additional notice and comment rulemaking to take final action on those SIP submissions. In this action, EPA is proposing a FIP that would effectively only impose a Federal requirement that sources in these districts must already meet pursuant to existing state or local requirements. For this reason, EPA does not anticipate that such sources would be subject to any additional burden as a result of such a FIP and we expect that if there is any such burden, it would be minimal. Accordingly, EPA does not believe that such a FIP would have a significant economic impact on any sources in these areas, regardless of size.

In the case of North Coast, EPA has not yet proposed to approve the SIP

revision necessary to make NOx a precursor for ozone in the context of PSD permitting. For this area, EPA is likewise only proposing a narrow FIP to fill the gap with respect to requiring PSD permits to address NOx as a precursor for ozone. To EPA's knowledge, in the past ten years there have been no major sources or major modifications in this area subject to PSD permitting requirements for NOx emissions. EPA does not anticipate that there will be additional sources that would require such a permit in the future, and EPA is not required to analyze theoretical future impacts. It would be speculative to estimate potential impacts on sources based solely on theoretical future sources. Based on this fact, EPA does not believe that such a FIP would have an impact on a substantial number of sources, regardless of size.

EPA is also proposing a FIP for the Feather River, Placer, and Sacramento areas, to take effect in the event that EPA is not able to finalize its proposed approval of SIP submissions for these areas with respect to the nonattainment NSR permitting requirements for ozone. The affected sources in these three areas are already required to meet essentially the same applicable requirements under state or local regulations contained within the SIP submissions that EPA has proposed to approve, even if EPA were not to finalize the approval of such regulations into the SIPs for these areas. Because the sources are already required to comply with the same substantive requirements by existing regulatory regimes, the proposed FIPs would not impose an additional burden. Thus, in these circumstances, EPA believes that were it to impose such a FIP on any of these areas in the final action on this proposal, it would not impose a significant economic impact on any source, regardless of size.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary

consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2011.

Keith Takata,

Acting Regional Administrator, Region IX.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.233 is amended by adding paragraph (h) to read as follows:

§ 52.233 Review of new sources and modifications.

* * * * *

(h) *Regulation for review of major stationary sources and major modifications for nitrogen oxides.* (1) Upon the effective date of this regulation, the requirements of this paragraph are applicable to any source under the jurisdiction of the APCDs listed below that is a major stationary source or major modification for nitrogen oxides in a ''serious'' ozone nonattainment area under 40 CFR part 51, Appendix S, and that is not otherwise subject to new source review under the applicable SIP for the area.

(i) Feather River AQMD.

(ii) Placer County APCD.

(iii) Sacramento Metropolitan AQMD.

(2) Except for a major stationary source that is subject to new source review under the applicable SIP for the area, no owner or operator shall commence construction of a new stationary source that emits or has the potential to emit 50 tons per year or more of nitrogen oxides, without first obtaining approval from the Administrator.

(3) Except for a major modification that is subject to new source review under the applicable SIP for the area, no owner or operator shall commence construction of a modification to an existing stationary source that results in a net emissions increase of 25 tons per year or more of nitrogen oxides, without first obtaining approval from the Administrator.

(4) For any major stationary source or major modification subject to this paragraph in accordance with the emission thresholds identified in paragraphs (h)(2) and (3) of this section, the Administrator shall approve the construction of such source or modification if the owner or operator demonstrates that construction of such source or modification satisfies the requirements of Sacramento Metropolitan AQMD Rule 202, as approved on June 19, 1985 (50 FR 25417).

* * * * *

3. Section 52.270 is amended by adding paragraphs (b)(2)(iv), (b)(3)(iv), and (b)(4)(iv) to read as follows:

§ 52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iv) Those projects which are major stationary sources or major modifications for nitrogen oxides as precursors to ozone under § 52.21.

(3) * * *

(iv) Those projects which are major stationary sources or major modifications for nitrogen oxides as precursors to ozone under § 52.21.

(4) * * *

(iv) Those projects which are major stationary sources or major modifications for nitrogen oxides as precursors to ozone under § 52.21.

[FR Doc. 2011–13397 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–9313–3]

Public Meeting: Preliminary Regulatory Determinations for the Third Contaminant Candidate List (CCL 3)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting.

SUMMARY: The 1996 Safe Drinking Water Act Amendments require the EPA to determine every five years, whether to regulate at least five contaminants from the current Contaminant Candidate List (CCL) with a national primary drinking water regulation. The process of making decisions about whether to regulate any of the unregulated contaminants on the CCL is called Regulatory Determinations. On October 8, 2009, EPA published the third Contaminant Candidate List (CCL 3) containing 116 unregulated contaminants. The Agency is currently in the preliminary process of deciding whether to regulate at least five CCL 3 contaminants (i.e., Regulatory Determinations 3). The purpose of this notice is to announce that EPA will be hosting a public stakeholder meeting on June 16, 2011, from 1 p.m. to 5 p.m., to discuss and obtain input on EPA's process for Regulatory Determination 3 along with the contaminants and the technical information that the Agency is considering. EPA expects to publish the preliminary regulatory determinations for at least five CCL 3 contaminants in mid-2012 and final regulatory determinations by August 2013.

DATES: The public meeting will be held in the Washington, DC metropolitan area on Thursday, June 16, 2011, from 1 p.m. to 5 p.m., Eastern Daylight Savings Time. Participants will be notified of the specific meeting room upon confirmation of registration.

FOR FURTHER INFORMATION CONTACT: For technical inquiries regarding EPA's Regulatory Determinations for contaminants on CCL 3 contact: Mr. Zeno Bain at (202) 564–5970 or by e-mail: *bain.zeno@epa.gov.* For additional information about the drinking water Contaminant Candidate List and the Regulatory Determinations process, please visit: *http://water.epa.gov/scitech/drinkingwater/dws/ccl/index.cfm.* Additional information on these and other EPA activities under the Safe Drinking Water Act is also available at the Safe Drinking Water Hotline at (800) 426–4791.

SUPPLEMENTARY INFORMATION:

Registration: Individuals planning to attend the Stakeholder Meeting must register for the meeting by contacting Melissa Simic at (202) 564–7722 or by sending an e-mail to *simic.melissa@epa.gov* no later than Wednesday, June 8, 2011. There is no charge for attending the meeting but seats are limited, so register as soon as possible. Please note that attendees will be required to pass through security checks at the front desk and obtain a visitor's badge. Pre-registration for this meeting will help us facilitate your check-in.

Special Accommodations: The meeting will be held in a building which is accessible to persons using wheel chairs or scooters. For

information on access or accommodations for individuals with disabilities, please contact Melissa Simic at (202) 564–7722 or by e-mail at *simic.melissa@epa.gov.* Please allow at least five business days prior to the meeting to give EPA time to process your request.

Dated: May 24, 2011.

Eric M. Bissonette,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2011–13404 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 170

RIN 0991–AB77

Permanent Certification Program for Health Information Technology; Revisions to ONC-Approved Accreditor Processes

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: Under the authority granted to the National Coordinator for Health Information Technology (the National Coordinator) by section 3001(c)(5) of the Public Health Service Act (PHSA) as added by the Health Information Technology for Economic and Clinical Health (HITECH) Act, this rule proposes a process for addressing instances where the ONC-Approved Accreditor (ONC–AA) engages in improper conduct or does not perform its responsibilities under the permanent certification program. This rule also proposes to address the status of ONC-Authorized Certification Bodies (ONC–ACBs) in instances where there may be a change in the accreditation organization serving as the ONC–AA and clarifies the responsibilities of the new ONC–AA.

DATES: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on August 1, 2011.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments, identified by RIN 0991–AB77, by any of the following methods (please do not submit duplicate comments).

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word or Excel, Adobe PDF; however, we prefer Microsoft Word. *http://www.regulations.gov*.
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: Revisions to ONC–AA Processes Proposed Rule, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave., SW., Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office of the National Coordinator for Health Information Technology, Attention: Revisions to ONC–AA Processes Proposed Rule, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave., SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information includes, but is not limited to: a person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered to be proprietary. We will post all comments received before the close of the comment period at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave., SW., Washington, DC 20201 (call ahead to the contact listed below to arrange for inspection).

FOR FURTHER INFORMATION CONTACT: Steven Posnack, Director, Federal Policy Division, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

Acronyms

EHR Electronic Health Record
HHS Department of Health and Human Services
HIT Health Information Technology
HITECH Health Information Technology for Economic and Clinical Health
ONC Office of the National Coordinator for Health Information Technology
ONC–AA ONC-Approved Accreditor
ONC–ACB ONC-Authorized Certification Body
ONC–ATCB ONC-Authorized Testing and Certification Body
PHSA Public Health Service Act
RFA Regulatory Flexibility Act
SBA Small Business Administration

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I. Background

[If you choose to comment on the background section, please include at the beginning of your comment the caption ''Background'' and any additional information to clearly identify the information about which you are commenting.]

A. Statutory Basis for the Permanent Certification Program

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A

and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), amended the Public Health Service Act (PHSA) to add a new ''Title XXX—Health Information Technology and Quality.'' Section 3001(c)(5) of the PHSA, as added by section 13101 of the HITECH Act, provides the National Coordinator for Health Information Technology (National Coordinator) with the authority to establish a certification program or programs for the voluntary certification of health information technology (HIT). Specifically, section 3001(c)(5)(A) states that the ''National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall keep or recognize a program or programs for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under [section 3004 of the PHSA].''

B. Regulatory Background of the Permanent Certification Program

1. Initial Set of Standards, Implementation Specifications, and Certification Criteria Interim Final and Final Rules

In accordance with section 3004(b)(1) of the PHSA, the Secretary issued an interim final rule with request for comments entitled ''Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology'' (75 FR 2014, Jan. 13, 2010) (the ''HIT Standards and Certification Criteria interim final rule''), which adopted an initial set of standards, implementation specifications, and certification criteria. After consideration of the public comments received on the interim final rule, a final rule was issued to complete the adoption of the initial set of standards, implementation specifications, and certification criteria and realign them with the final objectives and measures established for meaningful use Stage 1. Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology; Final Rule, 75 FR 44590 (July 28, 2010) (the ''HIT Standards and Certification Criteria final rule''). On October 13, 2010, an interim final rule was issued to remove certain implementation specifications related to public health surveillance that had been previously adopted in the HIT Standards and Certification Criteria final rule (75 FR 62686).

The standards, implementation specifications, and certification criteria adopted by the Secretary establish the capabilities that Certified Electronic Health Record (EHR) Technology must include in order to, at a minimum, support the achievement of meaningful use Stage 1 by eligible professionals and eligible hospitals [1] under the Medicare and Medicaid EHR Incentive Programs.

2. Medicare and Medicaid EHR Incentive Programs Proposed and Final Rules

Associated with the HIT Standards and Certification Criteria interim final rule, CMS concurrently published in the **Federal Register** (75 FR 1844, Jan. 13, 2010) the Medicare and Medicaid EHR Incentive Programs proposed rule. The rule proposed a definition for Stage 1 meaningful use of Certified EHR Technology and regulations associated with the incentive payments made available under Division B, Title IV of the HITECH Act.

Subsequently, CMS published a final rule for the Medicare and Medicaid EHR Incentive Programs in the **Federal Register** (75 FR 44314) on July 28, 2010 (the ''Medicare and Medicaid EHR Incentive Programs final rule''), simultaneously with the publication of the HIT Standards and Certification Criteria final rule. The final rule published by CMS established the objectives and associated measures that eligible professionals and eligible hospitals must satisfy in order to demonstrate ''meaningful use'' during Stage 1.

3. HIT Certification Programs Proposed Rule and the Temporary and Permanent Certification Programs Final Rules

Based on the authority provided in section 3001(c)(5) of the PHSA, we proposed both a temporary and permanent certification program for HIT in a notice of proposed rulemaking entitled ''Proposed Establishment of Certification Programs for Health Information Technology'' (75 FR 11328, Mar. 10, 2010). We proposed to use the certification programs for the purposes of testing and certifying HIT and specified the processes the National Coordinator would follow to authorize organizations to perform the testing and/or certification of HIT. Notably, we issued two final rules to implement our proposals. On June 24, 2010, a final rule was published in the **Federal Register** (75 FR 36158) to establish a temporary certification program (the ''Temporary Certification Program final rule''). On January 7, 2011, a final rule was published in the **Federal Register** (76 FR 1262) to establish the permanent certification program (the ''Permanent Certification Program final rule''). The permanent certification program will eventually replace the temporary certification program, which will sunset on December 31, 2011, or on a subsequent date if the permanent certification program is not fully constituted at that time.

EHR technology that is tested and certified through the certification programs currently must be tested and certified in accordance with all applicable certification criteria adopted by the Secretary under section 3004(b)(1) of the PHSA and could potentially be used to satisfy the definition of Certified EHR Technology. Eligible professionals and eligible hospitals that successfully demonstrate meaningful use of Certified EHR Technology may receive incentive payments under the Medicare and Medicaid EHR Incentive Programs.

C. Overview of the Permanent Certification Program

Key facets of the permanent certification program are summarized as follows. The permanent certification program provides a process by which an organization or organizations may become an Office of the National Coordinator for Health Information Technology-Authorized Certification Body (ONC–ACB) authorized by the National Coordinator to perform the certification of Complete EHRs and/or EHR Modules. ONC–ACBs may also be authorized under the permanent certification program to perform the certification of other types of HIT in the event that applicable certification criteria are adopted by the Secretary. We note, however, that the certification of Complete EHRs, EHR Modules, or potentially other types of HIT under the permanent certification program would not constitute a replacement or substitution for other Federal requirements that may be applicable.

An organization that seeks to become an ONC–ACB must, among other requirements, successfully obtain accreditation from the accreditation organization that has been approved by the National Coordinator as the ONC–Approved Accreditor (ONC–AA). Only one accreditation organization at a time may be approved to serve as the ONC–AA. An accreditation organization that wishes to be considered for ONC–AA status must submit a written request to the National Coordinator during the specified submission period and

[1] References to ''eligible hospitals'' in this rule shall mean ''eligible hospitals and/or critical access hospitals, as defined in 42 CFR 495.4'' unless otherwise indicated.

include certain information to demonstrate its ability to serve as the ONC–AA. The National Coordinator will determine which accreditation organization is best qualified to serve as the ONC–AA, and the organization that is approved on a final basis will be expected to serve a three-year term. The ONC–AA must fulfill certain on-going responsibilities for the permanent certification program, which include: maintaining conformance with ISO/IEC 17011:2004 (ISO 17011); in accrediting certification bodies, verifying that they conform to ISO/IEC Guide 65:1996 (Guide 65) at a minimum; and performing certain activities related to surveillance that will be conducted by ONC–ACBs.

The National Coordinator will accept applications for ONC–ACB status at any time, which must include the type of authorization sought, general identifying information, documentation that confirms that the applicant has been accredited by the ONC–AA, and an executed agreement that it will adhere to the Principles of Proper Conduct for ONC–ACBs. ONC–ACBs will be required to remain in good standing by, among other things, adhering to the Principles of Proper Conduct for ONC–ACBs, which include a requirement that an ONC–ACB must maintain its accreditation that was granted by the ONC–AA. An ONC–ACB's status will expire in three years, unless its status is renewed. The National Coordinator may revoke an ONC–ACB's status and/or suspend an ONC–ACB's operations under permanent certification program, based on Type-1 and Type-2 violations.

Testing and certification under the permanent certification program is expected to begin on January 1, 2012, or upon a subsequent date when the National Coordinator determines that the permanent certification program is fully constituted. The permanent certification program has no anticipated sunset date.

II. Provisions of the Proposed Rule

[If you choose to comment on the provisions of the proposed rule section, please include at the beginning of your comment the section title to which your comments apply and any additional information to clearly identify the proposals about which you are commenting.]

A. Removal of the ONC–AA for Improper Conduct or Failure To Perform Its Responsibilities

In the proposed rule to establish the temporary and permanent certification programs (75 FR 11328), we did not propose a formal process for the National Coordinator to remove or take other corrective action against an accreditation organization serving as the ONC–AA based on misconduct or failure to perform its responsibilities. We did propose and finalize a process through which the National Coordinator could revoke the status and/or suspend the operations of an ONC–Authorized Testing and Certification Body (ONC–ATCB) under the temporary certification program and an ONC–ACB under the permanent certification program. Some of the comments we received asked how we would address concerns with an ONC–AA's operations and remove or replace an ineffective ONC–AA. We responded to those comments in the Permanent Certification Program final rule (76 FR 1269) by stating our intentions to issue a notice of proposed rulemaking that would address improper conduct by an ONC–AA, the potential consequences for engaging in such conduct, and a process by which the National Coordinator may take ''corrective action'' against an ONC–AA. We recognized that an ONC–AA has significant responsibilities under the permanent certification program that are inextricably linked to the success of the program. We believe that a removal process, similar to the revocation and suspension processes we have established for ONC–ATCBs under the temporary certification program and ONC–ACBs under the permanent certification program, would protect the integrity of the permanent certification program and maintain public confidence in the program by removing an ONC–AA that engages in misconduct or fails to satisfy its performance obligations under the program.

To address improper conduct by the ONC–AA or its failure to perform its responsibilities under the permanent certification program, we are proposing a process for removing the ONC–AA that is similar to the process established in the Permanent Certification Program final rule for suspending and/or revoking an ONC–ACB's status. We propose that the National Coordinator may remove the ONC–AA under the permanent certification program based on either a conduct or performance violation by the ONC–AA. We describe these violations and the removal process below and in the provisions of proposed § 170.575. We welcome comments on our proposals discussed below.

1. Conduct Violations

The types of violations we would consider conduct violations include violations of law or permanent certification program policies that threaten or significantly undermine the integrity of the permanent certification program. Conduct violations would include, but are not limited to, false, fraudulent, or abusive activities that affect: the permanent certification program; a program administered by the Department of Health and Human Services (HHS); or any program administered by the Federal government. These violations could jeopardize the integrity of the permanent certification program and would include examples such as: the ONC–AA, or a principal employee, owner, or agent of the ONC–AA, being charged with or convicted of fraud, embezzlement or extortion, or of violating similar Federal or State securities laws while participating in the permanent certification program; falsifying accreditations; or withholding, destroying, or altering information that would indicate false or fraudulent activity had occurred within the permanent certification program.

For the public to maintain faith in the integrity of permanent certification program, the program's participants must properly fulfill their responsibilities. Therefore, we propose that if the National Coordinator has reliable evidence that the ONC–AA committed one or more conduct violations, the National Coordinator may issue the ONC–AA a notice proposing to remove it as the ONC–AA under the permanent certification program.

2. Performance Violations

The types of violations we would consider performance violations include the ONC–AA failing to properly fulfill one or more of its responsibilities specified in § 170.503(e). These responsibilities include: maintaining conformance with ISO 17011; in accrediting certification bodies, verifying conformance to, at a minimum, Guide 65 and ensuring the surveillance approaches used by ONC–ACBs include the use of consistent, objective, valid, and reliable methods; verifying that ONC–ACBs are performing surveillance in accordance with their respective annual plans; and reviewing ONC–ACB surveillance results to determine if the results indicate any substantive non-conformance by the ONC–ACBs with the conditions of their respective accreditations.

Opportunities to assess an ONC–AA's performance of its responsibilities will be available at certain junctures during the permanent certification program. As an example in the Permanent Certification Program final rule (76 FR 1270), we noted that the Principles of

Proper Conduct for ONC–ACBs require ONC–ACBs to submit annual surveillance plans and to annually report surveillance results to the National Coordinator. Our review of an ONC–ACB's surveillance results should give an indication of whether the ONC–AA is performing its responsibilities to review ONC–ACB surveillance results and verify that ONC–ACBs are performing surveillance in accordance with their surveillance plans. We also noted that we expect that our review and analysis of surveillance plans and results will not only include feedback from the ONC–ACBs but also feedback from the ONC–AA. The ONC–AA feedback will provide us with additional information on the ONC–AA's performance of its responsibilities to monitor and review ONC–ACBs' surveillance activities.

The National Coordinator could obtain information about the ONC–AA from other sources as well. For example, we could potentially receive information from an organization that sought accreditation by the ONC–AA and was denied, or from an ONC–ACB that had its accreditation withdrawn by the ONC–AA. Such information could provide reliable evidence that the ONC–AA was not in compliance with ISO 17011, as required by § 170.503(e)(1). For example, section 7 (Accreditation process) of ISO 17011 requires the ONC–AA to establish a proper assessment process for accrediting conformance assessment bodies (*i.e.,* certification bodies or ONC–ACBs), which includes establishing procedures to address appeals by such bodies. Information from a certification body that sought accreditation or an ONC–ACB could indicate whether the ONC–AA had a sufficient assessment or appeals processes in place. We propose that if the National Coordinator obtains reliable evidence from fact-gathering, requesting information from the ONC–AA, contacting the ONC–AA's customer(s), and/or complaints that the ONC–AA is not properly performing its responsibilities under § 170.503(e), the National Coordinator would notify the ONC–AA of an alleged performance violation. The notification would include all pertinent information regarding the National Coordinator's assessment. Unless otherwise specified by the National Coordinator, the ONC–AA would be permitted up to 30 days from the date it is notified about the alleged performance violation(s) to submit a written response and any accompanying documentation that could demonstrate no violation(s) occurred or validate that violation(s) occurred and were corrected. If the ONC–AA fails to submit a response to the National Coordinator within 30 days, the National Coordinator may issue the ONC–AA a notice proposing to remove it as the ONC–AA under the permanent certification program.

If the ONC–AA submits a response, the National Coordinator would be permitted up to 60 days to evaluate the ONC–AA's response (and request additional information, if necessary). If the National Coordinator determines that the ONC–AA did not commit a performance violation, or may have committed a performance violation but satisfactorily corrected any violation(s) that may have occurred, a memo will be issued to the ONC–AA to confirm this determination. If the National Coordinator determines that the ONC–AA's response is insufficient and that a performance violation had occurred and had not been adequately corrected, then the National Coordinator may propose to remove the ONC–AA.

3. Proposed Removal of the ONC–AA

Under our removal process, the National Coordinator may propose the removal of the ONC–AA for alleged conduct violations and for failing to respond to, or satisfactorily address, a notification related to a performance violation. Based on our assessment, the option to propose removal is more appropriate than the option to suspend the ONC–AA's activities under the permanent certification program. Any form of suspension would prevent the ONC–AA from performing its responsibilities under § 170.503(e), which would not benefit the permanent certification program because these ongoing responsibilities are an integral part of the program. We welcome comments on these options and whether certain circumstances may warrant the suspension of the ONC–AA.

4. Opportunity To Respond to a Proposed Removal Notice

If the National Coordinator issues a proposed removal notice to the ONC–AA, we propose that the ONC–AA must respond within 20 days of receipt of the removal notice in order to contest the proposed removal and must provide sufficient documentation to support its explanation for why it should not be removed. Upon receipt of the ONC–AA's response to a proposed removal notice, the National Coordinator would be permitted up to 60 days to review the information submitted by the ONC–AA and make a decision.

During the time period provided for the ONC–AA to respond to the proposed removal notice and the National Coordinator's review period, we would expect that the ONC–AA would continue to perform its responsibilities under the permanent certification program and propose that the National Coordinator would consider the ONC–AA's performance of its duties during this timeframe as a factor in reaching any final decision to remove the ONC–AA. We welcome comments on this proposal and whether it would be more appropriate for the National Coordinator to proceed in a different manner, including providing less time for the ONC–AA to respond to a proposed removal notice based on a conduct violation.

5. Removal of the ONC–AA

According to our proposal, the ONC–AA may be removed by the National Coordinator if it is determined that removal is appropriate after considering the information provided by the ONC–AA in response to the proposed removal notice or if the ONC–AA does not respond to a proposed removal notice within the specified timeframe. We propose that a decision to remove the ONC–AA would be final and would not be subject to further review unless the National Coordinator chooses to reconsider the removal.

If the National Coordinator determines that the ONC–AA should not be removed, the National Coordinator would notify the ONC–AA in writing to express this determination.

6. Extent and Duration of Removal Under the Permanent Certification Program

We propose that the removal of the ONC–AA would become effective upon the date specified in the removal notice and that the affected accreditation organization would be required to cease all activities under the permanent certification program, including accepting new requests for accreditation associated with the permanent certification program. We propose that an accreditation organization that has been removed as the ONC–AA will be prohibited from being considered for ONC–AA status for a period of 1 year from the effective date of removal. Violation(s) committed by the accreditation organization serving as the ONC–AA that result in its removal demonstrate that it cannot conduct itself properly or perform its responsibilities under the permanent certification program. Accordingly, we believe that if an accreditation organization has its ONC–AA status removed, it would be inappropriate to permit the accreditation organization to immediately reapply to become the

ONC–AA. We therefore propose a 1-year waiting period to prevent the affected accreditation organization from being considered when ONC goes through the process in § 170.503 to approve its replacement. We request public comment on alternatives for the treatment of an accreditation organization that is removed as the ONC–AA under the permanent certification program.

B. Effects of Removing and/or Replacing the ONC–AA

1. ONC–ACB Status

In § 170.523(a) we require that an ONC–ACB ''[m]aintain its accreditation.'' During the course of an ONC–ACB's three-year term, it is possible that there could be a change in accreditation organizations serving as the ONC–AA. In other words, the accreditation organization serving as the ONC–AA that initially accredited an ONC–ACB could be replaced by a different accreditation organization that is subsequently selected to serve as the ONC–AA. A change in ONC–AAs could occur under different scenarios, such as if the accreditation organization serving as the ONC–AA resigns before the end of its term, is replaced at the end of its term through the selection process under § 170.503, or is removed by the National Coordinator before the end of its term. If a different accreditation organization were to be approved as the ONC–AA, our primary goal would be to ensure stability among ONC–ACBs and within the HIT marketplace, which would include the uninterrupted certification of HIT. Therefore, we propose that if there is a change in accreditation organizations serving as the ONC–AA, such as in the scenarios described above, an ONC–ACB will retain its status under the permanent certification program, but only for a reasonable period of time to allow it to obtain accreditation from the accreditation organization that is approved as the new ONC–AA.

We propose that an ONC–ACB must obtain accreditation from the new ONC–AA within 12 months after the effective date of the new ONC–AA's status or within a reasonable period specified by the National Coordinator. We use the term ''effective date'' because although an accreditation organization could be approved as the ONC–AA pursuant to the process in § 170.503, its status as the ONC–AA may not become effective until a later date (*e.g.,* its status may not take effect until the then-current ONC–AA's term expires). Based on our consultations with subject matter experts at the National Institute for Standards and Technology (NIST), we believe that a new ONC–AA could complete the accreditation process for up to 6 ONC–ACBs within 6 to 9 months. We believe this could possibly be an appropriate timeframe and could be sufficient to meet the demand for accreditation considering that we estimated in the Permanent Certification Program final rule that only 6 ONC–ACBs will be operating under the permanent certification program and that only 6 ONC-Authorized Testing and Certification Bodies (ONC–ATCBs) are currently operating under the temporary certification program. However, considering that there may be more ONC–ACBs than we anticipate and that accreditation to the requirements of a new ONC–AA may require more time than anticipated, we believe 12 months would be a more reasonable timeframe for ONC–ACBs to obtain accreditation from the new ONC–AA. We believe the 12-month grace period provides for equitable treatment of ONC–ACBs, especially those that in good faith and without sufficient notice of a possible change in the ONC–AA recently paid for and obtained accreditation from an ONC–AA that is subsequently removed or replaced. We welcome comments on whether we should consider a shorter or longer period of time than 12 months.

Our proposal permits the National Coordinator to specify a reasonable period of time for ONC–ACBs to obtain accreditation from the new ONC–AA as an alternative to the 12-month timeframe. We believe this discretion is necessary to address unanticipated events, including but not limited to the following examples. For example, the new ONC–AA may be unable to offer accreditation within the 12-month timeframe for various reasons, such as unexpected demand for its accreditation services. It would be prudent for the National Coordinator to have the flexibility to grant an extension to an ONC–ACB if it had filed a request for accreditation with the new ONC–AA before the 12-month timeframe had elapsed and the new ONC–AA had not yet completed its accreditation of the ONC–ACB. Alternatively, there may be a need for the National Coordinator to require that ONC–ACBs obtain accreditation from the new ONC–AA in less than 12 months to protect the integrity of the permanent certification program. This situation could occur if the accreditation organization removed as the ONC–AA engaged in conduct that called into question the legitimacy of the accreditations granted to ONC–ACBs. We welcome comments on these examples and whether there may be additional circumstances that would warrant the National Coordinator's exercise of discretion to specify a different period of time for obtaining accreditation from the new ONC–AA. We also welcome comments on whether there should be a maximum period of time beyond 12 months in which an ONC–ACB must obtain accreditation from the new ONC–AA no matter the circumstances.

We propose to revise § 170.523(a) to state that an ONC–ACB shall ''maintain its accreditation, or if a new ONC–AA is approved by the National Coordinator, obtain accreditation from the new ONC–AA within 12 months or a reasonable period specified by the National Coordinator and maintain such accreditation.''

2. New ONC–AA

As noted in our prior discussion, the National Coordinator may approve a new accreditation organization as the ONC–AA for reasons such as the former ONC–AA resigning, another accreditation organization being selected when the former ONC–AA's term expires, or the former ONC–AA being removed for conduct or performance violations as described above. The selection and approval of the new ONC–AA will be conducted as soon as possible and consistent with the processes and timeframes outlined in § 170.503. Doing so permits the new ONC–AA to begin fulfilling its responsibilities as specified under § 170.503(e) when its status as the ONC–AA becomes effective. This means that the new ONC–AA will be expected to fulfill its responsibilities under § 170.503(e) with respect to the ONC–ACBs that it accredited, as well as those ONC–ACBs that were accredited by the former ONC–AA and are not yet accredited by the new ONC–AA. The new ONC–AA would be responsible for verifying that all ONC–ACBs are performing surveillance in accordance with their respective annual plans, as required by § 170.503(e)(3). In addition, consistent with § 170.503(e)(4), the new ONC–AA would review all ONC–ACB surveillance results to determine if the results indicate any substantive non-conformance by the ONC–ACBs with the conditions of their respective accreditations (even if an ONC–ACB was accredited by the former ONC–AA).

Section 170.503(e)(2) requires the ONC–AA, ''[i]n accrediting certification bodies, [to] verify conformance to, at a minimum, [Guide 65] and ensure the surveillance approaches used by ONC–ACBs include the use of consistent, objective, valid, and reliable methods.'' In the Permanent Certification Program

final rule (76 FR 1270), we explained this ongoing responsibility would require the ONC–AA to verify that ONC–ACBs continue to conform to the provisions of Guide 65 at a minimum as a condition of continued accreditation. Similar to 170.503(e)(3) and (e)(4), we expect the new ONC–AA to fulfill the responsibilities outlined in § 170.503(e)(2) for the certification bodies it accredits and all ONC–ACBs, including those ONC–ACBs it has not yet had an opportunity to accredit. To clarify this expectation, we propose to revise § 170.503(e)(2) to require the ONC–AA to ensure that all ONC–ACBs continue to conform to Guide 65 at a minimum, as indicated below. We made similar clarifying revisions to § 170.503(e)(4) in the Permanent Certification Program final rule. In that final rule (76 FR 1270), we explained that we were revising § 170.503(e)(4) to account for the possibility that different accreditation organizations may be approved to serve as the ONC–AA. Specifically, we revised that section to clarify that the ONC–AA would be responsible for reviewing ONC–ACB surveillance results to determine if the results indicated any substantive non-conformance by ONC–ACBs with the conditions of ''their respective accreditations'' rather than ''with the terms set by the ONC–AA when it granted the ONC–ACB accreditation'' as we had proposed.

We propose to revise § 170.503(e) as follows. Paragraphs (e)(3) and (e)(4) would be redesignated as paragraphs (e)(4) and (e)(5), respectively. Paragraph (e)(2) would be revised to state that the ONC–AA shall ''[v]erify that the certification bodies it accredits and ONC–ACBs conform to, at a minimum, ISO/IEC Guide 65:1996 (incorporated by reference in § 170.599).'' This revision removes the second part of paragraph (e)(2), which we propose to make a separate new paragraph. We propose to number this new paragraph as (e)(3) and for it to state that the ONC–AA shall ''ensure that the surveillance approaches used by ONC–ACBs include the use of consistent, objective, valid, and reliable methods.''

Although these proposals will require the new ONC–AA to become familiar with the ONC–ACBs, many of which may not yet have been accredited by the new ONC–AA, we believe the proposed responsibilities are still achievable. With respect to the responsibilities under § 170.503(e)(3) and (4), ONC can make the ONC–ACBs' surveillance plans available to the new ONC–AA and the former ONC–AA's accreditation requirements should be publicly available, consistent with section 7.1.2 of ISO 17011, or they can be provided to the new ONC–AA by ONC. We expect that the new ONC–AA will fulfill these responsibilities in the manner we have described until it has the opportunity to accredit the ONC–ACBs according to its own accreditation requirements if applicable and to Guide 65 as required. As noted in the previous section's discussion, we propose to give ONC–ACBs 12 months or another reasonable period to obtain accreditation from the new ONC–AA. In considering the appropriateness of our proposed timeframe for ONC–ACBs to be accredited by the new ONC–AA, we ask that commenters also consider our expectations for the new ONC–AA during this timeframe. We also welcome additional comments on our expectations and proposals.

III. Response to Comments

Because of the large number of public comments normally received in response to **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

IV. Collection of Information Requirements

[If you choose to comment on the collection of information requirements section, please include at the beginning of your comment the caption ''Collection of Information Requirements'' and any additional information to clearly identify the information about which you are commenting.]

This proposed rule would only require the collection of information from the ONC–AA if we took an action against the ONC–AA under the provisions of this proposed rule and the ONC–AA submitted information to ONC in response to the action as provided for under the provisions of this proposed rule. The Paperwork Reduction Act of 1995, however, exempts the information collection activities referenced in this proposed rule. Specifically, 44 U.S.C. 3518(c)(1)(B)(ii) excludes collection activities during the conduct of administrative actions or investigations involving the agency against specific individuals or entities.

V. Regulatory Impact Statement

[If you choose to comment on the regulatory impact statement section, please include at the beginning of your comment the caption ''Regulatory Impact Statement'' and any additional information to clearly identify the information about which you are commenting.]

We have examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), 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 must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule does not reach the economic threshold and thus is not considered a major rule. Therefore, a regulatory impact analysis has not been prepared.

The Regulatory Flexibility Act (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The entities that will be directly affected by this proposed rule are likely small businesses in the form of accreditation organizations interested in becoming the ONC–AA, the ONC–AA, potential applicants for ONC–ACB status, and ONC–ACBs. We believe that these entities would either be classified under the North American Industry Classification System (NAICS) codes 541380 (Testing Laboratories) or 541990 (Professional, Scientific and Technical Services).[2] According to the NAICS codes identified above, this would mean Small Business Administration (SBA) size standards of $12 million and $7

[2] See 13 CFR 121.201.

million in annual receipts, respectively.[3]

We do not believe that this rule proposes requirements for the ONC–AA that would be unexpected by accreditation organizations interested in serving as the ONC–AA. An accreditation organization serving as the ONC–AA would expect to be required to properly fulfill its responsibilities and exhibit proper conduct or be subject to consequences. Moreover, as noted above, we indicated in prior rulemaking concerning the permanent certification program that we expected to issue this proposed rule and gave a general overview of the topics it would likely address. We believe the processes that we have proposed constitute the minimum amount of requirements necessary to accomplish our policy goals and that no appropriate regulatory alternatives could be developed to lessen the compliance burden for the ONC–AA. As for ONC–ACBs, this proposed rule mitigates any potential negative consequences of removing and replacing the ONC–AA if required. Should the ONC–AA be replaced, this proposed rule permits ONC–ACBs to retain their status and provides ONC–ACBs up to 12 months or a reasonable period specified by the National Coordinator to obtain accreditation from the new ONC–AA. Furthermore, the proposed process for addressing instances where the ONC–AA engages in improper conduct or fails to perform its responsibilities under the permanent certification program could create positive effects for program participants by increasing the accountability of the ONC–AA and protecting the integrity of the permanent certification program. We examined the implications of this proposed rule and have concluded, and the Secretary certifies, that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 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 level is approximately $136 million. This proposed rule will not impose an unfunded mandate on State, local, and Tribal governments or on the private sector of more than $135 million annually.

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 proposed rule 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 proposed rule was not reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 170

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Health care, Health information technology, Health insurance, Health records, Hospitals, Incorporation by reference, Laboratories, Medicaid, Medicare, Privacy, Reporting and recordkeeping requirements, Public health, Security.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter D, part 170, is amended as follows:

PART 170—HEALTH INFORMATION TECHNOLOGY STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA AND CERTIFICATION PROGRAMS FOR HEALTH INFORMATION TECHNOLOGY

1. The authority citation for part 170 continues to read as follows:

Authority: 42 U.S.C. 300jj–11; 42 U.S.C. 300jj–14; 5 U.S.C. 552.

2. In § 170.503, revise paragraph (e)(2), redesignate and republish paragraphs (e)(3) and (e)(4) as paragraphs (e)(4) and (e)(5), and add new paragraph (e)(3) to read as follows:

§ 170.503 Requests for ONC–AA status and ONC–AA ongoing responsibilities.

* * * * *

(e) * * *

(2) Verify that the certification bodies it accredits and ONC–ACBs conform to, at a minimum, ISO/IEC Guide 65:1996 (incorporated by reference in § 170.599);

(3) Ensure the surveillance approaches used by ONC–ACBs include the use of consistent, objective, valid, and reliable methods;

(4) Verify that ONC–ACBs are performing surveillance in accordance with their respective annual plans; and

(5) Review ONC–ACB surveillance results to determine if the results indicate any substantive non-conformance by ONC–ACBs with the conditions of their respective accreditations.

* * * * *

3. In § 170.523, republish the introductory text and revise paragraph (a) to read as follows:

§ 170.523 Principles of proper conduct for ONC–ACBs.

An ONC–ACB shall:

(a) Maintain its accreditation, or if a new ONC–AA is approved by the National Coordinator, obtain accreditation from the new ONC–AA within 12 months or a reasonable period specified by the National Coordinator and maintain such accreditation;

* * * * *

4. Add § 170.575 to read as follows:

§ 170.575 Removal of the ONC–AA.

(a) *Conduct violations.* The National Coordinator may remove the ONC–AA for committing a conduct violation. Conduct violations include violations of law or permanent certification program policies that threaten or significantly undermine the integrity of the permanent certification program. These violations include, but are not limited to: false, fraudulent, or abusive activities that affect the permanent certification program, a program administered by HHS or any program administered by the Federal government.

(b) *Performance violations.* The National Coordinator may remove the ONC–AA for failing to timely or adequately correct a performance violation. Performance violations constitute a failure to adequately perform the ONC–AA's responsibilities as specified in § 170.503(e).

(1) *Noncompliance notification.* If the National Coordinator obtains reliable evidence that the ONC–AA may no longer be adequately performing its responsibilities specified in § 170.503(e), the National Coordinator will issue a noncompliance notification with reasons for the notification to the ONC–AA requesting that the ONC–AA respond to the alleged violation and correct the violation, if applicable.

(2) *Opportunity to become compliant.* The ONC–AA is permitted up to 30 days from receipt of a noncompliance notification to submit a written response and accompanying documentation that demonstrates that no violation occurred or that the alleged violation has been corrected.

(i) If the ONC–AA submits a response, the National Coordinator is permitted up to 60 days from the time the

[3] The SBA references that annual receipts means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service tax return forms. For more information on the SBA's size standards, see the SBA's Web site at: *http://www.sba.gov/content/small-business-size-regulations.*

response is received to evaluate the response and reach a decision. The National Coordinator may, if necessary, request additional information from the ONC–AA during this time period.

(ii) If the National Coordinator determines that no violation occurred or that the violation has been sufficiently corrected, the National Coordinator will issue a memo to the ONC–AA confirming this determination. Otherwise, the National Coordinator may propose to remove the ONC–AA in accordance with paragraph (c) of this section.

(c) *Proposed removal.* (1) The National Coordinator may propose to remove the ONC–AA if the National Coordinator has reliable evidence that the ONC–AA has committed a conduct violation; or

(2) The National Coordinator may propose to remove the ONC–AA if, after the ONC–AA has been notified of an alleged performance violation, the ONC–AA fails to:

(i) Rebut the alleged violation with sufficient evidence showing that the violation did not occur or that the violation has been corrected; or

(ii) Submit to the National Coordinator a written response to the noncompliance notification within the specified timeframe under paragraph (b)(2) of this section.

(d) *Opportunity to respond to a proposed removal notice.* (1) The ONC–AA may respond to a proposed removal notice, but must do so within 20 days of receiving the proposed removal notice and include appropriate documentation explaining in writing why it should not be removed as the ONC–AA.

(2) Upon receipt of the ONC–AA's response to a proposed removal notice, the National Coordinator is permitted up to 60 days to review the information submitted by the ONC–AA and reach a decision.

(e) *Retention of ONC–AA status.* If the National Coordinator determines that the ONC–AA should not be removed, the National Coordinator will notify the ONC–AA in writing of this determination.

(f) *Removal.* (1) The National Coordinator may remove the ONC–AA if:

(i) A determination is made that removal is appropriate after considering the information provided by the ONC–AA in response to the proposed removal notice; or

(ii) The ONC–AA does not respond to a proposed removal notice within the specified timeframe in paragraph (d)(1) of this section.

(2) A decision to remove the ONC–AA is final and not subject to further review unless the National Coordinator chooses to reconsider the removal.

(g) *Extent and duration of removal.* (1) The removal of the ONC–AA is effective upon the date specified in the removal notice provided to the ONC–AA.

(2) An accreditation organization that is removed as the ONC–AA must cease all activities under the permanent certification program, including accepting new requests for accreditation under the permanent certification program.

(3) An accreditation organization that is removed as the ONC–AA is prohibited from being considered for ONC–AA status for a period of 1 year from the effective date of its removal as the ONC–AA.

Dated: May 24, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–13372 Filed 5–27–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No. FMCSA–2011–0146]

Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA requests public comment on: (1) Previously published regulatory guidance on the distinction between interstate and intrastate commerce in deciding whether operations of commercial motor vehicles within the boundaries of a single State are subject to the Federal Motor Carrier Safety Regulations (FMCSRs); (2) the factors the States are using in deciding whether farm vehicle drivers transporting agricultural commodities, farm supplies and equipment as part of a crop share agreement are subject to the commercial driver's license regulations; and (3) proposed guidance to determine whether off-road farm equipment or implements of husbandry operated on public roads for limited distances are considered commercial motor vehicles. The guidance would be used to help ensure uniform application of the safety regulations by enforcement personnel, motor carriers and commercial motor vehicle drivers.

DATES: Comments must be received on or before June 30, 2011.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0146 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help

and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: *MCPSD@dot.gov.* Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935) (1935 Act) provides that the Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (49 U.S.C. 31502(b)).

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations that ensure that: (1) Commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10), respectively).

The Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, October 27, 1986) (1986 Act) directs the Secretary of Transportation to prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The States must use those standards in issuing commercial driver's licenses (CDLs).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(L), (g), and (e)(1) to carry out the functions vested in the Secretary of Transportation by the 1935 Act, the 1984 Act, and the 1986 Act, respectively.

Background

The Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399) include several exceptions for agricultural operations. The FMCSA recently received inquiries about the applicability of these exceptions. As a result, the Agency has identified three issues that could benefit from clarification. First, how does one distinguish between intra- and interstate commerce when a CMV is operated within the boundaries of a single State? Second, should the Agency distinguish between indirect and direct compensation in deciding whether a farm vehicle driver is eligible for the exception to the CDL requirements in 49 CFR 383.3(d)(1)? Third, should implements of husbandry and other farm equipment be considered CMVs?

Distinguishing Between Intra- and Interstate Commerce

Most of the Agency's safety regulations, such as those in 49 CFR parts 390 through 399, are only applicable to the operation of CMVs, as defined in 49 CFR 390.5, in interstate commerce. The Federal courts have generated a large body of case law on the distinction between intra- and interstate commerce. The FMCSA's regulatory guidance on this issue is largely controlled by those decisions. The most recent guidance on this question involves 49 CFR 390.3, General applicability.[1]

Question 6: How does one distinguish between intra- and interstate commerce for the purpose of applicability of the FMCSRs?

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

While this guidance remains correct, FHWA's 1975 interpretations offered more detailed agricultural scenarios that can be helpful in understanding the distinction between intra- and interstate commerce.

For example, in one of the scenarios, grain is transported from farms to an elevator in the same State. Although no truckload or shipment is earmarked for any particular out-of-State purchaser, all of the grain is intended to be shipped to points outside the State. The grain is graded, tested, and blended at the elevator and then shipped to out-of-State points during the year following harvest. Under this scenario, the movement of the grain to the elevators is considered interstate commerce (40 FR 50671, 50674; October 31, 1975; copy in docket). Here, the intent of the farmers (whether or not explicitly articulated) was to have their grain shipped out of the State of origin in order to obtain the best price. The grain therefore remained in the stream of interstate commerce until it reached its destination.

Another example from the 1975 interpretations discusses transit arrangements. When it is the intent that shipments originating in a State move to a point in that State for a transit service, and then move to points outside the State, or the reverse, the intra-State portion to or from the transit point is considered interstate commerce. Many of the 1975 interpretations are based on Motor Carrier Cases of the Interstate Commerce Commission (ICC). The Federal courts have largely ratified the positions taken by the ICC. A copy of the relevant Motor Carrier Cases referenced in the 1975 notice is included in the docket. When the motor carrier safety functions of the ICC were transferred to the U.S. Department of Transportation's FHWA in the late 1960s, FHWA relied upon the ICC's Motor Carrier Cases to ensure effective implementation of the motor carrier safety program at the U.S. Department of Transportation.

The FMCSA believes the 1975 and 1997 **Federal Register** notices provide helpful information for enforcement officials and motor carriers. The Agency requests public comment on whether additional guidance or information is needed to clarify the distinction between intra- and interstate commerce in the agricultural industry. If you believe it is needed, please describe scenarios that would benefit from further discussion.

[1] Like most of the guidance posted on the Agency's Web site, this guidance was published by the Federal Highway Administration's Office of Motor Carriers, the predecessor to FMCSA, on April 4, 1997 (62 FR 16369, 16404).

Applicability of the Commercial Driver's License (CDL) Rules to Farm Vehicle Drivers Operating Under a Crop Share Farm Lease Agreement

Under the Agency's CDL regulations, persons who operate a CMV, as defined in 49 CFR 383.5, in interstate or intrastate commerce are required to have a CDL. However, a limited exception is provided for drivers of farm vehicles (49 CFR 383.3(d)(1)). A State may, at its discretion, exempt drivers of farm vehicles that are:

(1) Controlled and operated by a farmer, including operation by employees or family members;

(2) Used to transport agricultural products, farm machinery or farm supplies to or from a farm;

(3) Not used in the operations of a common or contract motor carrier; and

(4) Used within 241 kilometers (150 miles) of the farmer's farm.

The exception is limited to the driver's home State unless there is a reciprocity agreement with adjoining States.

It has come to FMCSA's attention that States may be taking varied approaches in interpreting the meaning of ''common or contract motor carrier'' as it relates to farm vehicle drivers operating under a crop share agreement and, as a result, may be applying the CDL exception inconsistently.

As background, it is the Agency's understanding that in a crop share arrangement, land owners generally rent out or lease their farm land to a tenant. The tenant agrees to pay the landlord a share of the crops grown on the leased lands as rent. This rent, *i.e.,* a portion of the crops, may be paid in a series of installment payments. The parties agree that each will provide certain items of equipment, materials, and labor, and pay a share of the expenses to run the farming operations. The tenant agrees to use the land for agricultural purposes only, and to farm the land in accordance with proper farming practices. The parties will share in the decision making and management of the farming operations to the extent set out in the lease. The landlord has a lien on the crops as security for the rent payable under the lease. In most cases, it appears that the share cropper transports the landlord's portion of the crops to market in his or her own CMV and is indirectly and implicitly compensated for this service in the form of a reduction in the landlord's share in the crops produced.

The FMCSA believes that the reference to ''operations of a common or contract carrier'' in the CDL exception (49 CFR 383.3(d)(1)(iii)) is clear. Given the information FMCSA has received about the varied interpretations of this phrase as it relates to crop share arrangements, however, it acknowledges that there may be uncertainty about how the phrase applies in the context of a crop share arrangement.

As a result, FMCSA requests public comment on this issue. Specifically, FMCSA seeks information on the following questions:

- How many States have exercised the discretion provided by 49 CFR 383.3(d)(1) to include in their State CDL regulations an exception for farm vehicle drivers?
- For States that have opted to include the farm vehicle exception in their State CDL laws and regulations, how are States interpreting the CDL regulations as they relate to farm vehicle drivers working in a crop share agreement?
- Do these States construe these regulations to make farm vehicle drivers working in a crop share agreement contract carriers?
- If so, what evidence are States reviewing to make the determination that a farm vehicle driver working in a crop share agreement is or is not operating as a contract carrier?
- Is the Agency's understanding of the crop share agreement accurate?
- What types of compensation arrangements exist between farm vehicle operators providing transportation services as part of a crop share agreement and their landlords?

Implements of Husbandry

This third issue arises from the fact that while a number of States exempt ''implements of husbandry'' from their vehicle safety regulations, there is no single, uniform definition of the term.

For example, one State defines an implement of husbandry as farm equipment that is equipped with pneumatic tires, infrequently operated or moved on highways and used for the benefit of the farmer's agricultural operations to perform agricultural production or harvest activities or transport agricultural products or agricultural supplies. Implements of husbandry can also be earthmoving equipment used in farming operations. Farm tractors and combines are typical examples of what would be considered to be implements of husbandry.

Another State's regulations explain that implements of husbandry include farm implements, machinery and tools, as used in tilling the soil, including self-propelled machinery specifically designed or adapted for applying plant food materials or agricultural chemicals but not ''designed or adapted for the sole purpose of transporting the materials or chemicals.'' The State provides a list of examples: Subsoilers, dozers (provided they are for farm use), cultivators, farm tractors, reapers, binders, combines, cotton module builders, planters, and discs. In this example, the State's rules explain that implements of husbandry do not include automobiles, trucks, or items used on the farm such as irrigation systems, silos, barns, *etc.*

The FMCSA believes the experience of State agencies in dealing with implements of husbandry suggests that FMCSA should consider new regulatory guidance to emphasize a practical approach for applying the safety requirements under 49 CFR parts 390–399 to agriculture, rather than one derived from strict, literal readings of the definitions of ''commercial motor vehicle'' and ''motor vehicle'' under 49 CFR 390.5. Based on those definitions, almost any type of self-propelled or towed motor vehicle used on a highway in interstate commerce is subject to the FMCSRs if the threshold for weight, passenger-carrying capacity, or amount of hazardous materials is reached. This is especially the case when the definition of ''motor vehicle'' is considered, which includes ''any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways. * * *'' (See 49 CFR 390.5) A narrowly literal reading would mean applying the rules in circumstances where they would be impractical and produce no discernible safety benefits.

The FMCSA provides an example of a practical alternative approach in the existing regulatory guidance concerning off-road construction equipment. Questions 6 and 7 from 49 CFR 383.3 and Questions 7 and 8 for 49 CFR 390.5 from the 1997 **Federal Register** notice (62 FR 16369, 16406) are reprinted below.

§ 383.3 Question 6 and § 390.5 Question 7: Does off-road motorized construction equipment meet the definitions of ''motor vehicle'' and ''commercial motor vehicle'' as used in §§ 383.5 and 390.5?

Guidance: No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed

to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

§ 383.3 Question 7 and § 390.5 Question 8: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

The FMCSA proposes to issue new regulatory guidance to address implements of husbandry, consistent with the approach used for off-road motorized construction equipment. The Agency requests public comment on this issue and the following proposal. Specifically, the Agency requests comments on whether there are specific examples of implements of husbandry that should be included in the guidance to assist the enforcement community and the industry in achieving a common understanding of how to apply the safety regulations.

Proposed Regulatory Guidance: Applicability of the FMCSRs to Implements of Husbandry

§ 383.5 Question 13 and § 390.5 Question 33

Question: Do implements of husbandry meet the definitions of ''commercial motor vehicle'' as used in 49 CFR 383.5 and 390.5?

Guidance: No. Implements of husbandry are outside the scope of these definitions when operated: (1) At a farm; or (2) on a public road open to unrestricted public travel, provided the equipment is not designed or used to travel at normal highway speeds in the stream of traffic. This equipment, however, must be operated in accordance with State and local safety laws and regulations as required by 49 CFR 392.2 and may be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question: What types of equipment are included in the category of implements of husbandry?

Guidance: The term implements of husbandry should be narrowly construed and limited to equipment which, by its design and function is obviously not designed or used to travel at normal highway speeds in the stream of traffic. Examples of such equipment include, but are not limited to, farm tractors, subsoilers, cultivators, reapers, binders, combines, cotton module builders, planters, and discs.

Request for Comments

FMCSA requests public comment on: (1) The distinction between interstate and intrastate commerce in making the determination whether certain transportation by CMVs, within the boundaries of a single State, is subject to the FMCSRs; (2) the relevance of the distinction between direct and indirect compensation in deciding whether certain farm vehicle drivers working under a crop share arrangement are subject to the Agency's CDL regulations; and, (3) the determination whether certain off-road farm equipment and implements of husbandry operated on public roads for limited distances should be considered CMVs and subject to the Agency's vehicle safety equipment regulations.

The Agency will consider all comments received by close of business on June 30, 2011. Comments will be available for examination in the docket at the location listed under the ''Addresses'' section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: May 20, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–13035 Filed 5–27–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0026; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Puerto Rican Harlequin Butterfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Puerto Rican harlequin butterfly (*Atlantea tulita*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended. After reviewing all available scientific and commercial information, we find that the listing of the Puerto Rican harlequin butterfly is warranted. Currently, however, listing the Puerto Rican harlequin butterfly is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the Puerto Rican harlequin butterfly to our candidate species list. If an emergency situation develops with this species that warrants an emergency listing, we will act immediately to provide additional protection. We will develop a proposed rule to list the Puerto Rican harlequin butterfly as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on May 31, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0026. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, PR 00622. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Assistant Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone at (787) 851–7297; or by facsimile at (787) 851–7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that listing the species may

be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On February 25, 2009, we received a petition dated February 24, 2009, from Mr. Javier Biaggi-Caballero requesting that we list the Puerto Rican harlequin butterfly as endangered and designate critical habitat under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required in 50 CFR 424.14(a). In an April 9, 2009, letter to the petitioner, we responded that we had received the petition. We stated that we would make a finding, to the maximum extent practicable within 90 days, as to whether or not the petition presented substantial information.

In that letter, we also stated that if the initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, we must commence a review of the status of the species concerned and at the conclusion of our status review, we would prepare and publish our 12-month finding on the petition to list the Puerto Rican harlequin butterfly as endangered or threatened and, if prudent and determinable, designate critical habitat under the Act.

On April 26, 2010, we published a 90-day finding (75 FR 21568) in which we concluded that the petition provided substantial information that listing of the Puerto Rican harlequin butterfly may be warranted, and we initiated a status review. To assist us in that status review, we requested comments and information from the public and asked that they be submitted on or before June 25, 2010. This notice constitutes the 12-month finding on the February 24, 2009, petition to list the Puerto Rican harlequin butterfly as endangered.

Species Information

Taxonomy and Species Description

The Puerto Rican harlequin butterfly is endemic to Puerto Rico and is one of the four species endemic to the Greater Antillean genus *Atlantea* (Biaggi-Caballero 2009, p. 1). The species was described by German lepidopterist Dr. Herman Dewitz in 1877, from specimens collected by Dr. Leopold Krug in the Municipality of Quebradillas, Puerto Rico.

The Puerto Rican harlequin butterfly has a wing span of about 2 to 2.5 inches (in) (6 centimeters (cm)) wide. Female and male harlequin butterflies are similar in color patterns and size. This butterfly is brownish black at the dorsal area with deep orange markings and confused black markings at the half basal anterior wing. The posterior wing has a wide black border enclosing a set of reddish-bronze sub-marginal points. The ventral side of the anterior wing is similar to the dorsal anterior wing, and the posterior is black with orange basal spots and a complete postdiscal beige band with a band of reddish spots distally and sub-marginal white half-moons. The costa, the most anterior (leading) edge of a wing, in males is gray and wide.

Females are multivoltine ovipositors (they produce several broods in a single season) (Biaggi-Caballero 2009, p. 2).

Habitat

The Puerto Rican harlequin butterfly occurs within the subtropical moist forest life zone on limestone-derived soil in the Northern karst Region (Ewel and Whitmore 1973, p. 25) and in the subtropical wet forest on serpentine-derived soil in the Maricao Commonwealth Forest (Ewel and Whitmore 1973, p. 32). The subtropical moist forest life zone on limestone-derived soil covers about 1.15 percent (10,338 ha (25,545.75 ac)) of the total area of Puerto Rico (USDA 2008, p. 21), however, the subtropical wet forest on serpentine-derived soil cover about 0.04 percent (358 ha (884.63 ac)) of the total area of Puerto Rico (USDA 2008, p. 20). It has been observed on a forest associated with the coastal cliffs of the area in Quebradillas and on sclerophullous forest (type of vegetation characterized by hard, leathery, evergreen foliage that is specially adapted to prevent moisture loss) in Maricao Commonwealth Forest. The vegetation in the Puerto Rican harlequin butterfly's habitat in Quebradillas consists of *Oplonia spinosa* (prickly bush), *Cocoloba uvifera* (sea grape), *Boureria suculenta* (palo de vaca), *Lantana camara* (cariaquillo), *Lantana imvolucrata* (cariaquillo), *Randia aculeate* (tintillo), *Vernonia albicaulis* (no common name), *Poitea paucifolia* (no common name), *Leucaena leucocephala* (leucaena), *Eupatorium odoratum* (no common name), *Erithalis fructicosa* (no common name), *Distictis lactifolia* (no common name), *Bidens pilosa* (no common name), *Croton rigidus* (adormidera), *Staehytarpeta jamaicensis* (no common name), *Stigmaphyllon emargiuatum* (bull reed), and *Tabebuia heterophylla* (roble).

The Puerto Rican harlequin butterfly has only been observed utilizing the *Oplonia spinosa* (prickly bush) as its host plant (plant used for laying the eggs and serves as a food source for the development of the larvae). *Oplonia spinosa* is a common tropical coastal shrub and is widely distributed in Puerto Rico. The Puerto Rican harlequin butterfly only lays eggs in the vegetative (green) stems on the apical zone (the tenderest zone on *Oplonia spinosa* new growth) (Biaggi-Caballero 2010, p. 2). No other stage of host plant is used for ovoposition (action of laying eggs). The chrysalis is also attached to dried twigs of the host plant (Biaggi-Caballero 2009, p. 3). The adult butterflies feed from the nectars of the flowers available at the site but have not been observed feeding from the prickly bush. The majority of the individuals were found feeding on flowers of sea grape, palo de vaca, and cariaquillo.

Carrión-Cabrera (2003, p. 40) states that the dispersion of the species is limited by the monophagus habit of the larvae (only utilizes the prickly bush). Additionally, the butterfly flies slowly and is weak and fragile; the species is considered relatively sedentary (not able to move or disperse in a given environment) (Carrión-Cabrera 2003, p. 51).

Distribution

The historic range of the Puerto Rican harlequin butterfly includes the Northern karst Region, the Central-western Volcanic Region, and the Southern karst Region of Puerto Rico. Within these three regions, the species historically had been reported from five municipalities: (1) In the Northern karst Region, the species was reported from the Municipalities of Quebradillas and Arecibo; (2) in the Central-western Volcanic Region, the species was reported from the Municipalities of Maricao and Sabana Grande; and (3) in the Southern karst Region, the species was reported from the Municipality of Peñuelas (Carrión-Cabreara 2003, p. 32).

Recently, the Puerto Rican harlequin butterfly has been reported from two populations in two regions: (1) The

Quebradillas population in the Northern karst Region, and (2) the Maricao population in the Central-western Volcanic-Serpentine Region (Pérez-Asso *et al.* 2009, p. 94). The Quebradillas population occurs in approximately 144 ha (356 acres) strip of forested habitat located on the northern coastal cliff between the Municipalities of Isabela, Quebradillas, and Camuy (Biaggi-Caballero 2009, p. 4). Here, the species' habitat is limited to the east by the Bellacas Creek, to the west by the Guajataca River, to the north by the Atlantic Ocean, and to the south by Puerto Rico (PR) Highway 2 (a state road that runs parallel to the north coast from Aguadilla to San Juan) and deforested areas utilized for agricultural practices such as cattle grazing. Within the Northern karst Region, the Puerto Rican harlequin butterfly occurs in:

- 10 scattered patches in the Terranova and San José wards in the Municipality of Quebradillas that occupy an area of 1.05 ha (2.6 acres (10,525 square meters)) (Monzón-Carmona 2007, p. 42);
- One patch in the forested cliff of Coto ward in the Municipality of Isabela (Monzón-Carmona 2007, p. 41) that occupy an area of 0.26 ha (0.65 acres (2,630.5 square meters)); and
- One small patch in Puerto Ermina in the Municipality of Camuy (Biaggi-Caballero 2010, pers. comm.).

The Quebradillas population occurs in private lands and public lands. Five of the 10 patches known in the Municipality of Quebradillas fall within El Merendero, a public land managed for recreation (Monzón-Carmona 2007, p. 84). The other 7 patches, including the patch in the Municipality of Isabela and the patch in the Municipality of Camuy are located in private lands.

In the Central-western Volcanic-Serpentine Region, the Puerto Rican harlequin butterfly occurs in the Maricao Commonwealth Forest, a public forest managed for conservation by the Puerto Rico Department of Natural and Environmental Resources. The Maricao Commonwealth Forest is located between the Municipalities of Maricao and Sabana Grande in the central-west section of the island to the west of Mayaguez, approximately 108.88 kilometers (km) (67.66 miles (mi)) from San Juan (Pérez-Asso *et al.* 2009, p. 94). The discrete population of Puerto Rican harlequin butterflies occurs near PR Highway 120, a state road that provides access from the Municipality of Maricao to the Municipality of Sabana Grande.

The Puerto Rican harlequin butterfly has not been found in the Southern karst Region since 1926 (Biaggi-Caballero 2010, p. 4).

Carrión-Cabrera (2003, p. 60) observed only 235 Puerto Rican harlequin butterfly imagoes (mature adult stage) in 12 months of surveys (2 sample days per month) on 0.82 acre in Quebradillas. However, more recently, Biaggi-Caballero (2009, p. 4) estimated the population to be 45 or fewer adults on any given day in the Municipality of Quebradillas. Larva counts were reported to be between 10 and 100 per census day (2 man-hours of search efforts), and the presence of more than one generation confirms the species' multivoltine (producing several broods in a season) nature. From July to December, the larva population is lower than during the rest of the year.

Since 2002, only 3 imagoes (Biaggi-Caballero 2010, p. 5) and 12 larvae (H. Torres 2010, pers. comm.) of the Puerto Rican harlequin butterfly have been reported in the Maricao Commonwealth Forest between the 16.0-km (9.94-mi) and 16.8-km (10.44-mi) points of PR Highway 120.

TABLE 1—CURRENT DISTRIBUTION OF THE PUERTO RICAN HARLEQUIN BUTTERFLY IN PUERTO RICO (USFWS, 2011)

Regions of Puerto Rico	Municipalities	Estimated populations	Hectare (ha) (acres)	Species presence
Northern Karst Region	Isabela, Quebradillas and Camuy.	45 or less imagoes/10 to 100 larva (Carrión-Cabreara 2003, p. 34).	1.3 ha (3.2 acres) (Monzón-Carmona 2007, p. 44).	Current population (Biaggi-Caballero 2010, p. 4).
Central-western Volcanic-Serpentine Region.	Maricao	No more than 5 imagoes/ no more than 10 larva (Carrión-Cabrera 2003, p. 48).	Not determinate (unknown)	Current population (Pérez-Asso *et al.* 2009, p. 94).
	Sabana Grande	Unknown	Unknown	Not observed since 1980's (Biaggi-Caballero 2010, p. 4).
Southern Karst Region	Peñuelas	Unknown	Unknown	Not observed since 1926 (Biaggi-Caballero 2010, p. 4).

The Puerto Rican harlequin butterfly population has been estimated at around 50 imagoes in the Northern karst Region (Biaggi-Caballero 2009, p. 4) and fewer than 20 imagoes in the Volcanic-serpentine center mountain of the island (Carrión-Cabrera 2003, p. 48).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or education purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Puerto Rican harlequin butterfly in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms

are defined in the Act. However, the identification of the factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Habitat modification and habitat fragmentation have been identified by species experts as the main threat to the Puerto Rican harlequin butterfly (Carrión-Cabrera 2003, p. 44; Monzón-Carmona 2007, p. 54; Biaggi-Caballero 2009, p. 1; Pérez-Asso *et al.* 2009, p. 11; DNER 2010, p. 11). The consequences of the loss and fragmentation of natural habitat for the species is detrimental because the species: (a) Is sedentary, (b) has limited distribution, (c) has highly specialized ecological requirements (discussed in more detail under Factor E), and (d) is considered a specialist species because of the larvae's monophagous habit of feeding only on *Oplonia spinosa* (Carrión-Cabrera 2003, p. 40).

The Puerto Rican harlequin butterfly faces significant threats from the existing and imminent destruction, modification, and curtailment of its habitat and geographic range in the Municipalities of Isabella, Quebradillas, and Camuy. Most of the suitable habitat for the species, especially in the Municipality of Quebradillas, is currently fragmented by urban development. Dr. Stuart Ramos reported that, in 1997, one of the healthiest populations of the species showed a drastic decrease after the use of heavy equipment to clear vegetation in the Puente Blanco area (Carrión-Cabrera 2003, p. 13). Biaggi-Caballero (2010, p. 3) expects that between 2010 and 2011 more than 30 percent of existing habitat in the Municipality of Quebradillas would be lost as a result of urban development. In areas where undeveloped land remains, the species' larval food plant is likely to be affected by existing agricultural practices that result in deforestation to increase grass lands, such as cattle grazing.

Currently, the Puerto Rican harlequin butterfly is threatened by large-scale residential and tourist projects, which are planned within and around its habitat in northern Puerto Rico. For instance, in the municipalities of Isabella and Quebradillas, occupied suitable habitat is within an area classified by both municipalities and the Puerto Rico Planning Board (PRPB) as a ''Zone of Tourist Interest'' (PRPB 2009, online data at *http://www.jp.gobierno.pr*). Zone of Tourist Interest is an area that by its natural features and historic value has the potential to be developed to promote tourisms. Further, the coastline of Isabella and Quebradillas is under pressure of urban and tourist development, with only small remnants of coastal vegetation conserved in the steeper areas of the northern cliff. In this area, landowners clear vegetative cover to the edge of the cliff so that potential buyers have a better view of the property and its landscape (Biaggi-Caballero 2010, p. 9). According to the PRPB, 11 development projects are under evaluation around the species' habitat, possibly affecting 74.8 cuerdas (29.4 ha (72.6 ac)) in Quebradillas (PRPB 2010, online data). Urban development in or around the Puerto Rican harlequin butterfly's habitat would directly and indirectly fragment and impact its habitat and would limit its population expansion in the area.

Additionally, the establishment of residential and tourist developments is expected to increase traffic and therefore is likely to require road improvements in proximity to the Puerto Rican harlequin butterfly's habitat. The biological effects to the species of the existing roads have not been studied and are not understood in Quebradillas and Maricao. However, increasing vehicle traffic on the roads within the essential habitat of a species with difficulties to move or disperse can result in mortality due to collisions and, in some instances, can be catastrophic to the population and should not be underestimated (Glista 2007, p. 85). The combination of habitat fragmentation and high road density may negatively impact the species and its habitat.

Summary of Factor A

Based on the above, we believe that the Puerto Rican harlequin butterfly is currently threatened by residential and tourist development and habitat fragmentation. Development and habitat fragmentation within suitable habitat would substantially affect the distribution and abundance of the species, as well as its habitat, throughout its range. The scope and timing of this factor are considered by the Service to be high and imminent because the known populations occur in areas that are subject to development, increased traffic, and increased road maintenance and construction. Therefore, based on the existing and likely future trends in habitat loss and fragmentation from development, we find that the Puerto Rican harlequin butterfly is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

An unknown number of Puerto Rican harlequin butterflies have been collected for scientific purposes and deposited in universities and private collections (J. Biaggi-Caballero 2011, pers. comm.). However, at the present time, only a few researchers are working with the Puerto Rican harlequin butterfly, and collection of the species is regulated by Puerto Rico Department of Natural and Environmental Resources (DNER).

We are not aware of any information that indicates the butterflies are being sought by collectors or collected for other purposes. Therefore, we do not find that overutilization for commercial, recreational, scientific, or educational purposes threatens the Puerto Rican harlequin butterfly.

Factor C: Disease or Predation

Biaggi-Caballero (2010, p. 8) suggests the abundance of spiders (*Misumenus bubulcus, Peucetia viridians, Argiope argentata* and *Nephila clavipes*) as a possible source of predation to the Puerto Rican harlequin butterfly. He also mentions lizards (*Anolis cristatellus* and *Anolis striatus*) and birds (*Tyrannus dominguensis, Dendroinca adelaida adelaida,* and *Quiscalus brachypterus*) as possible predators. Although no predator has been documented attacking and eating imagoes, larvae, or eggs, the sudden disappearance of larvae under observation suggests depredation (Biaggi-Caballero 2010, p. 8). Although the Puerto Rican harlequin butterfly may face predation by spiders, lizards, and birds, we are not aware of any data that indicate that predation is a significant threat to the species.

We are not aware of any information regarding any impacts from either disease or predation on the Puerto Rican harlequin butterfly. Therefore, we do not find that disease or predation threatens the Puerto Rican harlequin butterfly.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Puerto Rico Department of Natural and Environmental Resources (DNER) designated the Puerto Rican harlequin butterfly as Critically Endangered under Commonwealth Law

241 and Regulation 6766 on February 11, 2004 (DNER 2007, p. 42; DNER 2010, p. 1). Article 2 of Regulation 6766 includes all prohibitions and states that the designation as 'critically endangered' prohibits any person to take the species; including harm, possess, transport, destroy, import or export individuals, nests, eggs, or juveniles without previous authorization from the Secretary of DNER (DNER 2007, p. 28). At the present time, the DNER has not designated critical habitat for the species under Regulation 6766. Therefore, protection of the species' habitat does not exist at this time.

Although the Commonwealth Law 241 and Regulation 6766 provide adequate protection for the species, however the lack of effectiveness of enforcement makes them inadequate for the protection of the habitat of the Puerto Rican harlequin butterfly, and particularly its host plant (Biaggi-Caballero 2010, p. 9). Biaggi-Caballero (2010, p. 9) states that constant violation of the law occurs when the species' habitat is modified, destroyed, or fragmented by urban development and vegetation-clearing activities. The host plant is considered a common species associated with edges of forested lands and is not protected by Commonwealth Law 241 or Regulation 6766. Under Factor A and Factor E, we discuss in more detail certain cases of lack of enforcement that have led to threats to the species and its habitat. For these reasons, we conclude that existing regulatory mechanisms may be inadequate to protect the habitat of the Puerto Rican harlequin butterfly.

Summary of Factor D

Commonwealth Law 241 and Regulation 6766 provide protection for the Puerto Rican harlequin butterfly but not to its habitat. Based on the above information, we conclude that the Puerto Rican harlequin butterfly is threatened by the inadequacy of existing regulatory mechanisms.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Based on a review of the best available information, we have determined that the Puerto Rican harlequin butterfly may also be threatened by: Its limited distribution, low reproductive capacity, and ecological requirements; human-induced fire; use of herbicides and pesticides; vegetation management; and climate change.

Limited Distribution

The Puerto Rican harlequin butterfly is vulnerable to extinction due to low population numbers and restricted distribution (only two isolated colonies), coupled with habitat alteration or loss, and the monophagus habit of its larvae (Carrión-Cabrera 2003, p. 40). The Quebradillas population occupy about 0.9 percent of the total area of the forested habitat located on the northern cliff between the Municipality of Isabela, Quebradillas and Camuy. For instance, in Quebradillas, where the most significant population occurs, the species occupies only 10,525 square meters (m^2) (2.6 ac^2 (1.05 ha^2)) distributed in 10 scattered patches that fluctuate from 77 m^2 (0.019 ac^2 (0.007 ha^2)) to 3,287 m^2 (0.812 ac^2 (0.387 ha^2)) (Monzón-Carmona 2007, p. 44). Its small range may reflect a remnant population of a once widely-distributed butterfly whose habitat has been altered or lost due to previous land uses. Dr. Hernan Torres, entomologist at the University of Puerto Rico, suggests that its limited distribution may be an effect of deforestation for agricultural practices and of pesticides uses for pest and mosquito control (H. Torres 2010, pers. comm.).

Although the host plant *Oplonia spinosa* has been found widely distributed throughout Puerto Rico, the Puerto Rican harlequin butterfly was only detected in two localities (Carrión-Cabreara 2003, p. 39). Additionally, Monzón-Carmona (2007, p. 43) suggests that although the species can disperse several hundred meters (approximately 800 meters (2,625 feet)) and has the capacity to colonize adjacent patches of *Oplonia spinosa,* it also shows the smallest geographic range of any butterfly in Puerto Rico. This information suggests that the current limited distribution of the Puerto Rican harlequin butterfly is based on an undetermined ecological requirement of the species found in these particular sites at Isabela, Quebradillas, Camuy and Maricao.

Low Reproductive Capacity and Highly Specialized Ecological Requirements

The Puerto Rican harlequin butterfly's low reproductive capacity and its highly specific ecological requirements for reproduction are a threat to the species because it has been reduced from a larger historical range and population size, and these characteristics make the species less resilient and resistant to stressors that may impact existing popluations. Carrión-Cabrera (2003, p. 60) conducted a species survey where only 235 adult individuals were observed in 12 months. Eggs and larvae have been found only on *Oplonia spinosa* (Biaggi-Caballero 2010, p. 2). Its broods generally contain 50 to 150 eggs, with an average of 102 eggs per brood (Carrión-Cabrera 2003, p. 38). The author also found that the number of larvae decreased as the number of adult individuals increased. This information suggests that the population dynamic of the species may be synchronized with an undetermined environmental factor (Carrión-Cabrera 2003, p. 46).

Human-Induced Fire

Human-induced fire is a current threat for the species at Quebradillas and at Maricao (Biaggi-Caballero 2009 p. 5; Biaggi-Caballero 2010, p. 10). Fire may kill adult, young and larva of Puerto Rican harlequin butterfly, and temporarily/permanent eliminates its habitat. The Maricao Commonwealth Forest had been subjected to human-induced fire, affecting habitat potentially used by the species. At the Maricao Commonwealth Forest, the species occurs in the driest section of the forest near PR Road 120. On February 25, 2005, arson burned more than 400 acres with unknown effects to the Puerto Rican harlequin butterfly population (Biaggi-Caballero 2010, p. 10). This fire likely had at least temporary effects on the butterfly's habitat, but we have no information regarding these effects and whether or not they were permanent. In Quebradillas, the species' habitat in the Puente Blanco area (which is where the most significant population occurs) is threatened by fires associated with clandestine garbage dumps on Road 4485 (DENR 2010, unpublished data, p. 23).

Use of Herbicides and Pesticides

The use of herbicides is a current threat to the species and its host plant, *Oplonia spinosa,* which is found at the edges of roads and open areas. The use of herbicides is a current practice implemented by neighborhoods to eliminate vegetation along the access road to Puente Blanco (Road 4485) and private properties, and it affects an undetermined number of *Oplonia spinosa* plants in Quebradillas (C. Pacheco, USFWS, personal observation 2009).

Further, fumigation programs are being implemented by the Commonwealth of Puerto Rico and local health officials at Terranova and San José wards to control dengue fever (a virus-based disease spread by mosquitoes) (Biaggi-Caballero 2010, p. 9). The area where this population occurs in Quebradillas is surrounded by

residential development. No pesticide use guidelines have been developed where the species occurs (Biaggi-Caballero 2010, p. 9).

Vegetation Management

Vegetation management at El Merendero in Quebradillas (public land managed as a recreational area and where the species currently occurs) may adversely affect the Puerto Rican harlequin butterfly and its host plant. *Oplonia spinosa* grows on both sides of the existing hiking trails and around the picnic areas. Maintenance personnel frequently trim the new growth of *Oplonia spinosa* to remove vegetation from the trails and picnic areas. The Puerto Rican harlequin butterfly uses the tenderest vegetative branches of new growth of the host plant for bearing its eggs and feeding during the larval stages (Biaggi-Caballero 2010, p. 2). Trimming the host plant and clearing the vegetation in these areas may result in mortality of the Puerto Rican harlequin butterfly's eggs and larvae. Currently, no guidelines about vegetation management and clearing have been developed to avoid or minimize effects to the species and its host plant.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that evidence of warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term climate changes have been observed, including changes in arctic temperatures and ice, and widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2007b, p. 7). While continued change is certain, the magnitude and rate of change is unknown in many cases.

Species that are dependent on specialized habitat types, that are limited in distribution or that have become restricted to the extreme periphery of their range will be most susceptible to the impacts of climate change. As previously mentioned, the Puerto Rican harlequin butterfly is only known from the North karst Region and the central-western Volcanic-serpentine Region of Puerto Rico, and requires a very specialized habitat type. Therefore, we found the data to be restrictive and did not find any site-specific climate change information for the Puerto Rican harlequin butterfly or its habitat. We searched for studies and literature related to the effects of climate change throughout the Puerto Rican harlequin butterfly's historical and currently known range and did not identify any data related to the effects of climate change on the species. We also searched for similar data related to the prickly bush and did not find any data. Additionally, there is no information regarding naturally occurring fires, wind patterns, and extreme weather (including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones) as a result of weather. Potential effects of climate change on the species and its habitat are currently unknown. Therefore, at this time, we do not consider climate change to be a threat to the species and its habitat.

Summary of Factor E

The primary natural or manmade threats to the Puerto Rican harlequin butterfly appear to be the species' limited distribution and its highly specialized ecological requirements. The scope of these threats is considered high and imminent. These threats may promote susceptibility to declines and affect the species' populations directly during all life stages. [In combination or by themselves, the primary natural or manmade threats explained above may exacerbate the intensity, duration, and exposure level of any other threats acting upon the species, including the use of herbicides and pesticides, vegetation management, and human-induced fires. Based on this information, we conclude that other natural or manmade factors affecting the continued existence of the species constitute a threat to the Puerto Rican harlequin butterfly now, and that this threat is expected to continue and potentially increase in the foreseeable future.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the Puerto Rican harlequin butterfly is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with Puerto Rican harlequin butterfly experts and other Federal and State agencies.

This status review identified threats to the species attributable to Factors A, D, and E. One of the primary threats to the species comes from the destruction, modification, or curtailment of its habitat (Factor A) in the form of past, current, and future urban, agricultural, and commercial development. Available information indicates that a substantial portion of the Puerto Rican harlequin butterfly's habitat will be affected in the near future. One of the surviving populations is located on private lands and the other population is located in the Maricao Commonwealth Forest. Any habitat modification that results in loss or fragmentation may cause irreversible damage to the species' natural habitat and will cause further declines in the number of individuals. Threats by modification of the natural habitat are evidenced by the decrease in individuals in recent years and by development pressure on Quebradillas (see Factor A).

The inadequacy of existing regulatory mechanisms (Factor D) is a threat because populations located on public and private lands lack effective enforcement of existing regulatory mechanisms to protect the Puerto Rican harlequin butterfly.

We also consider the Puerto Rican harlequin butterfly's limited distribution and specialized ecological requirements (Factor E) to be significant threats to the species and its habitat. The use of herbicides and hand-clearing of vegetation may change the conditions necessary for the species to complete its cycle or life, and may affect *Oplonia spinosa's* seed germination or seedling recruitment at Quebradillas. However, at this time, we have no evidence of any regulation of pesticide or herbicide use, or of manual cutting of vegetation in and around the species' habitat. Additionally, the effects of fire on the population is unclear at Maricao (see Factor E). In addition, the low numbers of individuals per population, the specialist requirements of the species, and fragmented distribution may threaten the existence of the species (see Factor E).

The Service does not have information that suggests overutilization (Factor B) or disease and predation (Factor C) may threaten the continued existence of the species. In general, the majority of the factors mentioned in the five-factor analysis may adversely affect the known populations of the Puerto Rican harlequin butterfly. Depending on the intensity and the immediacy of such threats, these factors, either by themselves or in combination, are operative threats that act on the species and its habitat.

On the basis of the best scientific and commercial information available, we find that the listing of the Puerto Rican harlequin butterfly as endangered or threatened is warranted. Moreover, because of the small and restricted

populations of this species and because of the threats described above, the Puerto Rican harlequin butterfly should be listed as endangered or threatened throughout its entire range. We will make a determination on the status of the species as endangered or threatened during the proposed listing process. As explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species in accordance with section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time, even though the threats are of a high magnitude and imminent. We base that decision on the existence of two populations known to occur in Puerto Rico. We do not have any information that these populations are at risk of extinction now. However, if at any time we determine that issuing an emergency regulation temporarily listing the species is warranted, we will initiate such action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled ''Endangered and Threatened Species Listing and Recovery Priority Guidelines,'' address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates). We assigned the Puerto Rican harlequin butterfly a Listing Priority Number (LPN) of 2 based on our finding that the species faces threats that are of high magnitude and are imminent. These threats include the present or threatened destruction, modification, or curtailment of its habitat; the inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting the species' continued existence. This is the highest priority that can be provided to this species under our guidance. Our rationale for assigning the Puerto Rican harlequin butterfly an LPN of 2 is outlined below.

Under the Service's LPN guidance, the magnitude of threats is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threats are those species facing the greatest threats to their existence. These species receive the highest listing priority. We consider the threats to the Puerto Rican harlequin butterfly to be high in magnitude because many of the threats that we analyzed are present throughout the range and are likely to result in an adverse impacts to the status of the species because of its small population size and limited distribution.

Under our LPN guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that species facing actual, identifiable threats are given priority over those for which threats are will likely occur in the future, or species that are intrinsically vulnerable but are not known to be presently facing threats. Not all threats to the Puerto Rican harlequin butterfly are imminent, but we do have evidence of some currently ongoing threats. Studies show that the Puerto Rican harlequin butterfly is limited by its lack of recruitment and low reproductive capacity, both of which are likely due to habitat fragmentation.

Threats under Factor A are high in magnitude and imminent because the known populations occur in areas subject to development, increased traffic, and increased road maintenance and construction. The potential for inadequacy of regulatory mechanisms (Factor D) due to enforcement is considered moderate in magnitude and imminent. The majority of the threats under Factor E are high in magnitude and imminent because they are currently occurring throughout the range of the species and result in the lack of successful recruitment. Threats under Factor E have occurred in the past and are clearly a threat today and in the near future. These impacts directly affect the species' ability to reproduce and expand to larger areas, and may promote susceptibility to population declines.

The third criterion in our LPN guidelines is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. We have carefully reviewed the available taxonomic information to reach the conclusion that Puerto Rican harlequin butterfly is a valid taxon at the species level. The Puerto Rican harlequin butterfly faces high magnitude, imminent threats. Thus, in accordance with our LPN guidance, we have assigned the Puerto Rican harlequin butterfly an LPN of 2.

We will continue to monitor the threats to the Puerto Rican harlequin butterfly, and the species' status, on an annual basis, and should the magnitude or the imminence of the threats change, we will revise the LPN accordingly.

Work on a proposed listing determination for the Puerto Rican harlequin butterfly is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year 2011. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not

limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107—103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we do plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.'' Although that statement appeared to refer specifically to the ''to the maximum extent practicable'' limitation on the 90-day deadline for making a ''substantial information'' finding (see 16 U.S.C. 1533(b)(3)(A)), that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 9, 2011, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level through April 15, 2011. Until Congress appropriates funds for FY 2011 at a different level, we will fund listing work based on the FY 2010 amount. Thus, at this time in FY 2011, the Service anticipates an appropriation of $22,103,000 for the listing program based on FY 2010 appropriations. Of that, the Service anticipates needing to dedicate $11,632,000 for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $9,971,000 available to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, it is unlikely that the Service will be able to initiate any new listing determination for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, currently only $500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our administrative record).

For the above reasons, funding a proposed listing determination for the Puerto Rican harlequin butterfly is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, work on final listing determinations for those species that were proposed for listing with funds from FY 2011, and work on proposed listing determinations for those candidate species with a higher listing priority.

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank; Heritage rank (provided by NatureServe); Heritage threat rank (provided by NatureServe); and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered); the highest Heritage rank (G1); the highest Heritage threat rank (substantial, imminent threats); and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed one delisting rule.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-Month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting)	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered.	Proposed Listing Endangered	75 FR 67551–67583
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR77801–77817
12/14/2010	12-Month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR *9681–9692*
2/22/2011	12-Month Finding on a Petition to List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 991–10003
2/23/2011	12-Month Finding on a Petition to List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial	76 FR 10299–10310
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–31322
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR *14210–14268*
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 18138–18143
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR *18684–18701*
4/5/2011	90-Day Finding on a Petition to List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR *18701–18706*
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 20464–20488
4/13/2011	90-Day Finding on a Petition to List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR *20613–20622*
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR *20911–20918*
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR *20918–20939*
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR *23256–23265*
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial	76 FR 23265–23271
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-

priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) [5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw) [5].	12-month petition finding.
4 parrots species (crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo) [5].	12-month petition finding.
Utah prairie dog (uplisting)	90-day petition finding.
Actions With Statutory Deadlines	
Casey's june beetle	Final listing determination.
6 Birds from Eurasia	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace) [4].	Final listing determination.
Ozark hellbender [4]	Final listing determination.
Altamaha spinymussel [3]	Final listing determination.
3 Colorado plants (*Ipomopsis polyantha* (Pagosa Skyrocket), *Penstemon debilis* (Parachute Beardtongue), and *Phacelia submutica* (DeBeque Phacelia)) [4].	Final listing determination.
Salmon crested cockatoo	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) [5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) [5]	Final listing determination.
CA golden trout [4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/Proposed listing.
Dusky tree vole	12-month petition finding.
5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere* (*Arabis*) *pusilla, Penstemon gibbensii*) from 206 species petition.	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition) [3]	12-month petition finding.
Platte River caddisfly (from 206 species petition) [5]	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Grand Canyon scorpion (from 475 species petition)	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition) [4]	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition).	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Striped Newt [1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Puerto Rico Harlequin Butterfly [3]	12-month petition finding.
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*) [4]	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
Whitebark pine	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Ashy storm-petrel [5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs) [1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Bay skipper	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler [4]	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee [4]	90-day petition finding.
2 Idaho snowflies (straight snowfly & Idaho snowfly) [4]	90-day petition finding.
American eel [4]	90-day petition finding.
Gila monster (Utah population) [4]	90-day petition finding.
Leona's little blue [4]	90-day petition finding.
Aztec gilia [5]	90-day petition finding.
White-tailed ptarmigan [5]	90-day petition finding.
San Bernardino flying squirrel [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Chimpanzee	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*) [5]	90-day petition finding.
I'iwi [5]	90-day petition finding.
Carolina hemlock	90-day petition finding.
Western glacier stonefly (*Zapada glacier*)	90-day petition finding.
Thermophilic ostracod (*Potamocypris hunteri*)	90-day petition finding.
Sierra Nevada red fox [5]	90-day petition finding.
High-Priority Listing Actions	
19 Oahu candidate species [2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9).	Proposed listing.
19 Maui-Nui candidate species [2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
Chupadera springsnail [2] (*Pyrgulopsis chupaderae*) (LPN = 2)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) [4].	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) [5]	Proposed listing.
Miami blue (LPN = 3) [3]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3].	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) [3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)) [3].	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus* var. *acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN =2)) [5].	Proposed listing.
FL bonneted bat (LPN = 2) [3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (=*Cereus*) *aboriginum* (=*gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2)) [5].	Proposed listing.
21 Big Island (HI) species [5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) [3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2) [5]	Proposed listing.
Jemez Mountain salamander (LPN = 2) [5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Puerto Rican harlequin butterfly will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed classification of the Puerto Rican harlequin butterfly will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

Dated: May 15, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–13224 Filed 5–27–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 104
Tuesday, May 31, 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 Marketing Service

[AMS–FV–11–0043; FV11–916/917–6]

Nectarines and Peaches Grown in California; Notice of Withdrawal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; withdrawal.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing the notice soliciting comments on its request for approval to use new forms to collect information related to the Federal marketing orders for nectarines and peaches grown in California (orders). Continuance referenda were conducted among growers of California nectarines and peaches in January and February 2011. Fewer than two-thirds of participating growers, by number and production volume, voted in favor of continuing the nectarine and peach orders. USDA has suspended the quality, inspection, reporting, and assessment requirements under the orders (76 FR 21615), effective April 19, 2011. USDA intends to seek termination of the orders.

DATES: *Effective date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Supervisory Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–6862, Fax: (202) 720–8938, Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on this notice by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 690–3919, Fax: (202) 720–8938, or Email: *antoinette.carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order Nos. 916 and 917, both as amended (7 CFR Parts 916 and 917), regulate the handling of nectarines and peaches grown in California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–604; "Act"). The Federal programs for nectarines and peaches are administered through a partnership between the U.S. Department of Agriculture (USDA) and the Reedley, CA-based California Tree Fruit Agreement (CTFA). The Nectarine Commodity Committee and the Peach Commodity Committee make up a part of the CTFA.

On February 25, 2011, a notice requesting comments on the use of five new forms to collect information was published in the **Federal Register** (76 FR 10555) with a comment period ending on April 26, 2011.

Continuance referenda were conducted among growers of California nectarines and peaches in January and February 2011. Fewer than two-thirds of participating growers, by number and production volume, voted in favor of continuing the nectarine and peach orders. USDA has suspended the quality, inspection, reporting, and assessment requirements under the orders (76 FR 21615), effective April 19, 2011. USDA intends to initiate termination of the orders.

Consequently, the forms that were proposed to be used are no longer needed. The Agency has decided not to proceed with the action. Therefore, the notice published on February 25, 2011 (76 FR 10555) is withdrawn.

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–13482 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

WTO Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the updated quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

DATES: *Effective Date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Safeguard Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Avenue, SW., Washington, DC 20250–1021; or *by telephone at:* (202) 720–0638; or *by e-mail at: itspd@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1005 (Jan. 4, 1995). The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43(a)(2) (2007)). The Annex to this notice

contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (2011) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

Notice: As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Uruguay Round Agricultural Safeguard Trigger Levels published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Issued at Washington, DC, this 16th day of May 2011.

Suzanne E. Heinen,

Acting Administrator, Foreign Agricultural Service.

ANNEX

QUANTITY-BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	242,780 mt	January 1, 2011 to December 31, 2011.
Mutton	5,576 mt	January 1, 2011 to December 31, 2011.
Cream	867,562 liters	January 1, 2011 to December 31, 2011.
Evaporated or Condensed Milk	2,262,128 kilograms	January 1, 2011 to December 31, 2011.
Nonfat Dry Milk	327,518 kilograms	January 1, 2011 to December 31, 2011.
Dried Whole Milk	2,135,595 kilograms	January 1, 2011 to December 31, 2011.
Dried Cream	21,166 kilograms	January 1, 2011 to December 31, 2011.
Dried Whey/Buttermilk	18,594 kilograms	January 1, 2011 to December 31, 2011.
Butter	6,188,045 kilograms	January 1, 2011 to December 31, 2011.
Butter Oil and Butter Substitutes	6,441,469 kilograms	January 1, 2011 to December 31, 2011.
Dairy Mixtures	30,574,663 kilograms	January 1, 2011 to December 31, 2011.
Blue Cheese	4,530,512 kilograms	January 1, 2011 to December 31, 2011.
Cheddar Cheese	9,824,536 kilograms	January 1, 2011 to December 31, 2011.
American-Type Cheese	4,978,590 kilograms	January 1, 2011 to December 31, 2011.
Edam/Gouda Cheese	6,388,906 kilograms	January 1, 2011 to December 31, 2011.
Italian-Type Cheese	21,718,995 kilograms	January 1, 2011 to December 31, 2011.
Swiss Cheese with Eye Formation	26,060,155 kilograms	January 1, 2011 to December 31, 2011.
Gruyere Process Cheese	3,411,433 kilograms	January 1, 2011 to December 31, 2011.
Lowfat Cheese	448,925 kilograms	January 1, 2011 to December 31, 2011.
NSPF Cheese	41,636,693 kilograms	January 1, 2011 to December 31, 2011.
Peanuts	18,176 mt	April 1, 2010 to March 31, 2011.
	19,279 mt	April 1, 2011 to March 31, 2012.
Peanut Butter/Paste	4,493 mt	January 1, 2011 to December 31, 2011.
Raw Cane Sugar	1,142,815 mt	October 1, 2010 to September 30, 2011.
	1,278,131 mt	October 1, 2011 to September 30, 2012.
Refined Sugar and Syrups	176,800 mt	October 1, 2010 to September 30, 2011.
	203,088 mt	October 1, 2011 to September 30, 2012.
Blended Syrups	134 mt	October 1, 2010 to September 30, 2011.
	192 mt	October 1, 2011 to September 30, 2012.
Articles Over 65% Sugar	277 mt	October 1, 2010 to September 30, 2011.
	247 mt	October 1, 2011 to September 30, 2012.
Articles Over 10% Sugar	15,083 mt	October 1, 2010 to September 30, 2011.
	16,434 mt	October 1, 2011 to September 30, 2012.
Sweetened Cocoa Powder	1,054 mt	October 1, 2010 to September 30, 2011.
	700 mt	October 1, 2011 to September 30, 2012.
Chocolate Crumb	8,051,334 kilograms	January 1, 2011 to December 31, 2011.
Lowfat Chocolate Crumb	211,289 kilograms	January 1, 2011 to December 31, 2011.
Infant Formula Containing Oligosaccharides	582,933 kilograms	January 1, 2011 to December 31, 2011.
Mixes and Doughs	383 mt	October 1, 2010 to September 30, 2011.
	286 mt	October 1, 2011 to September 30, 2012.
Mixed Condiments and Seasonings	280 mt	October 1, 2010 to September 30, 2011.
	432 mt	October 1, 2011 to September 30, 2012.
Ice Cream	2,309,155 liters	January 1, 2011 to December 31, 2011.
Animal Feed Containing Milk	39,223 kilograms	January 1, 2011 to December 31, 2011.
Short Staple Cotton	591,350 kilograms	September 20, 2010 to September 19, 2011.
	30,605 kilograms	September 20, 2011 to September 19, 2012.
Harsh or Rough Cotton	0 kilograms	August 1, 2010 to July 31, 2011.
	60 kilograms	August 1, 2011 to July 31, 2012.
Medium Staple Cotton	149,148 kilograms	August 1, 2010 to July 31, 2011.
	51,298 kilograms	August 1, 2011 to July 31, 2012.
Extra Long Staple Cotton	2,017,042 kilograms	August 1, 2010 to July 31, 2011.
	1,007,631 kilograms	August 1, 2011 to July 31, 2012.
Cotton Waste	432,133 kilograms	September 20, 2010 to September 19, 2011.
	595,320 kilograms	September 20, 2011 to September 19, 2012.
Cotton, Processed, Not Spun	31,338 kilograms	September 11, 2010 to September 10, 2011.
	75,787 kilograms	September 11, 2011 to September 10, 2012.

[FR Doc. 2011–13223 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sitka Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sitka Resource Advisory Committee will meet in Sitka, Alaska. 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 this meeting, is to finalize the list of funded projects.

DATES: The meeting will be held on June 22, 2011, and will begin at 4 p.m.

ADDRESSES: The meeting will be held at the Forest Service Building, Katlian Conference Room, 204 Siginaka Way, Sitka, Alaska. Written comments should be sent to Lisa Hirsch, Sitka Ranger District, 204 Siginaka Way, Sitka, Alaska 99835. Comments may also be sent via e-mail to *lisahirsch@fs.fed.us,* or via facsimile to 907–747–4253.

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 Sitka Ranger District, 204 Siginaka Way, Sitka, Alaska. Visitors are encouraged to call ahead to 907–747–4214 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lisa Hirsch, RAC coordinator, USDA, Tongass NF, Sitka Ranger District, 204 Siginaka Way, Sitka, Alaska 99835; 907–747–4214; e-mail *lisahirsch@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: May 23, 2011.

Carol A. Goularte,

Designated Federal Officer.

[FR Doc. 2011–13363 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet in Weaverville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meetings are open to the public. The purpose of the meetings are to review project presentations and vote on project proposals.

DATES: The meetings will be held Monday, July 25 and Monday, September 12 at 6:30 p.m.

ADDRESSES: The meetings will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Donna Harmon, Designated Federal Official, at (530) 226–2595 or *dharmon@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION.**

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: May 23, 2011.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2011–13331 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Dixie Resource Advisory Committee will meet in Cedar City, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of this meeting is to make recommendations for Title II projects.

DATES: Wednesday, June 29, 2011, Wednesday, July 13, 2011, and Thursday, August 11, 2011

ADDRESSES: All of the meetings will be held at Paiute Tribe of Utah Headquarters, 440 North Paiute Drive (200 East), Cedar City, Utah. The public is invited to attend the meetings.

FOR FURTHER INFORMATION CONTACT: Kenton Call, RAC Coordinator, Dixie National Forest, (435) 865–3730; e-mail: *ckcall@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. The following business will be conducted: (1) Welcome and committee introductions; (2) Review of category voting from previous meeting; (3) Discussion of RAC project recommendations; and (4) Public comment on any proposals. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input will be accepted by the RAC during the meetings.

Dated: May 23, 2011.

Robert G. MacWhorter,

Forest Supervisor.

[FR Doc. 2011–13326 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, Montana. The purpose of the meeting is for project presentations.

DATES: The meeting will be held June 28, 2011 at 6:30 p.m.

ADDRESSES: The meeting will be held at 1801 N. First Street. Written comments should be sent to Stevensville RD, 88 Main Street, Stevensville, MT 59870. Comments may also be sent via e-mail to *dritter@fs.fed.us* or via facsimile to 406–777–5461.

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 88 Main Street, Stevensville, MT. Visitors are encouraged to call ahead to 406–777–5461 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter or Nancy Trotter at 406–777–5461.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring project matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 27, 2011 will have the opportunity to address the Council at those sessions.

Dated: May 23, 2011.

Julie K. King,

Forest Supervisor.

[FR Doc. 2011–13324 Filed 5–27–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Huron Manistee Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Huron Manistee Resource Advisory Committee will meet in Mio, Michigan. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to conduct committee business and to review proposed projects.

DATES: The meeting will be held Wednesday June 15, 2011 from 5:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Mio Ranger Station, 107 McKinley Road, Mio, Michigan 48647. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.**

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 Mio Ranger Station. Please call ahead to (989) 826–3252 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Designated Federal Official or Carrie Scott, Natural Resource Planner, Huron-Manistee National Forests, Mio Ranger Station, 107 McKinley Road, Mio, MI 48647; (989) 826–3252.

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. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: *The following business will be conducted:* (1) Introductions and review of previous meeting; (2) Presentation of Title II project proposals; (3) RAC discussion and Title II project recommendations and (4) Public comment.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 14, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Huron Manistee RAC, c/o Mio Ranger Station, 107 McKinley Road, Mio Michigan 48647 or by e-mail to *cnscott@fs.fed.us* or via facsimile to (989) 826–6073.

Dated: May 23, 2011.

Steven A. Goldman,

Designated Federal Official.

[FR Doc. 2011–13334 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot Resource Advisory Committee will meet in Stevenson, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend fiscal year 2012 Title II project nominations to the Forest Supervisor of the Gifford Pinchot National Forest.

DATES: The meeting will be held Friday, June 17, 2011, beginning at 9 a.m.

ADDRESSES: The meeting will be held at Skamania Courthouse Annex, 170 Northwest Vancouver Avenue, Stevenson, WA 98648. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.**

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 Gifford Pinchot National Forest Headquarters, 10600 NE. 51st Circle, Vancouver, WA 98682. Please call ahead to 360–891–5001 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Sue Ripp, Partnership Coordinator, Gifford Pinchot National Forest, 360–891–5153, and *sripp@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person

listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: *The following business will be conducted:* Approval of agenda and minutes; public forum opportunity; election of chair and vice chair; update on prior year Title II projects, and; review and recommendations of individual fiscal year 2012 Title II project nominations. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 16, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Gifford Pinchot National Forest *Attn:* Sue Ripp, 10600 NE. 51st Circle, Vancouver, WA 98682, or by e-mail to *sripp@fs.fed.us* or via facsimile to 360–891–5045.

Dated: May 17, 2011.

Charles L. Byrd III,

Acting Forest Supervisor .

[FR Doc. 2011–13338 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Correct FR Doc. 2011–12588; Notice of meeting.

SUMMARY: The Northern New Mexico Resource Advisory Committee (NNM RAC) will meet in Albuquerque, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review the agenda, make presentation of appointment certificates to NNM RAC members, conduct ethics training for NNM RAC members, revisit Operation Guidelines to add language on conflicts of interest, discuss support letters from counties, review monitoring report, provide opportunity for proponents to present proposals (5 minutes each), provide NNM RAC members opportunity to ask questions about proposals (3 minutes each), review and rank project proposals by Category Groups, provide recommendation for funding of projects to Designated Federal Official, set date for next meeting, and provide for public comment.

DATES: The meeting will be held on June 28, 2011 beginning at 10 a.m. and ending at 5 p.m. and on June 29, 2011 beginning at 8 a.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at Cibola National Forest Supervisors Office at 2113 Osuna Rd NE Albuquerque, NM 87113 in the conference room. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

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 Carson National Forest, 208 Cruz Alta Road Taos, New Mexico. Please call ahead to 575–758–6344 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ignacio Peralta, RAC Coordinator, Carson National Forest, 575–758–6344, *iperalta@fs.fed.us.*

Ruben Montes, RAC Coordinator, Santa Fe National Forest, 505–438–5356, *rmontes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review of agenda, make presentation of appointment certificates to NNM RAC members, conduct ethics training for NNM RAC members, revisit Operation Guidelines to add language on conflicts of interest, discuss support letters from counties, review monitoring report, provide opportunity for proponents to present proposals (5 minutes each), provide NNM RAC members opportunity to ask questions about proposals (3 minutes each), review and rank project proposals by Category Groups, provide recommendation for funding of projects to Designated Federal Official, set date for next meeting, and provide for public comment. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 21, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 208 Cruz Alta Road, or by e-mail to *iperalta@fs.fed.us,* or via facsimile to 575–758–6213.

Dated: May 24, 2011.

Kendall Clark,

Forest Supervisor, Carson National Forest.

[FR Doc. 2011–13335 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Request for Applications for the Veterinary Medicine Loan Repayment Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is announcing the release of the Veterinary Medicine Loan Repayment Program (VMLRP) Request for Applications (RFA) at *http://www.nifa.usda.gov/vmlrp.*

DATES: The FY 2011 Veterinary Medicine Loan Repayment Program (VMLRP) application package has been made available at *http://www.nifa.usda.gov/vmlrp* and applications are due by Friday, July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2240; 1400 Independence Avenue, SW.; Washington, DC 20250–2240; *Voice:* 202–401–4952; *Fax:* 202–401–6156; *E-mail: gsherman@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2009, the Cooperative State Research, Education, and Extension Service (CSREES) became the National Institute of Food and Agriculture (NIFA) as mandated by the Food, Conservation, and Energy Act of 2008, section 7511(f) [Pub. L. 110–246]. Accordingly, the authority to administer the VMLRP transferred from CSREES to NIFA.

Background and Purpose

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97) appropriated $495,000 for CSREES to implement the VMLRP and represented the first time funds had been appropriated for this program.

In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) appropriated an additional $495,000 to CSREES for support of the program, in December 2007, the Consolidated Appropriations Act, 2008 appropriated an additional $868,875 to CSREES for support of this program, in March 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted, providing an additional $2,950,000 for the VMLRP, and in October 2009, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (Pub. L. 111–80) appropriated an additional $4,800,000 for the VMLRP. On April 15, 2011, the President signed into law, Public Law 112–10, Department of Defense and Full-Year Continuing Appropriations Act, 2011, which, after the .2% rescission, appropriated an additional $4,790,400 for the VMLRP.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) Geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. This program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree. Loans eligible for repayment include educational loans made for one or more of the following: Loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. Finally, this section requires USDA to promulgate regulations within 270 days of the enactment of FCEA (*i.e.,* June 18, 2008). The Secretary delegated the authority to carry out this program to NIFA.

The final rule was published in the **Federal Register** on April 19, 2010 [75 FR 20239–20248]. Based on comments received during the 60-day comment period upon publication of the interim rule [74 FR 32788–32798, July 9, 2009], NIFA reconsidered the policy regarding individuals who consolidated their veterinary school loans with other educational loans (*e.g.* undergraduate) and their eligibility to apply for the VMLRP. NIFA will allow these individuals to apply for and receive a VMLRP award; however, only the eligible portion of the consolidation will be repaid by the VMLRP. Furthermore, applicants with consolidated loans will be asked to provide a complete history of their student loans from the National Student Loan Database System (NSLDS), a central database for student aid operated by the U.S. Department of Education. The NSLDS website can be found at *http://www.nslds.ed.gov.* Individuals who consolidated their DVM loans with non-educational loans or loans belonging to an individual other than the applicant, such as a spouse or child, will continue to be ineligible for the VMLRP.

In 2010, VMLRP announced its first funding opportunity and received 260 applications from which NIFA issued 53 VMLRP awards totaling $5,186,000. Consequently, up to $8,000,000 is available to support this program in FY 2011. The eligibility criteria for applicants and the application forms and associated instructions needed to apply for a VMLRP award can be viewed and downloaded from the VMLRP Web site at *http://www.nifa.usda.gov/vmlrp.*

Done in Washington, DC, this 24th day of May 2011.

Meryl Broussard,

Deputy Director, National Institute of Food and Agriculture.

[FR Doc. 2011–13303 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–22–P

BROADCASTING BOARD OF GOVERNORS

Government in the Sunshine Act Meeting Notice

DATE AND TIME: Friday, June 3, 2011; 9:a.m.

PLACE: Broadcasting Board of Governors, 330 Independence Ave., SW., Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will meet at the time and location listed above. The BBG will, among other things, consider two resolutions honoring employees for their service, consider a resolution to award and present David Burke Distinguished Journalism Awards, and receive and consider a report from the Governance Committee regarding reforming the Agency's management structure. Board members will also report on the state of U.S. International Broadcasting (USIB), Board efforts to reform USIB, and the BBG's year-long strategic review. The meeting is open to the public, but due to space limitations advance registration is required. Member of the public seeking to attend the meeting in person must register at *http://bbg.eventbrite.com/* by June 1. This event can also be viewed live and on demand at BBG's public Web site at *http://www.bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more

information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2011–13580 Filed 5–26–11; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 14, 2011, 9 a.m., Room 4830, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Opening remarks by Bureau of Industry and Security.
3. Export Enforcement update.
4. Regulations update.
5. Working group reports.
6. Automated Export System (AES) update.
7. Presentation of papers or comments by the Public.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.gov* no later than June 7, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: May 23, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–13389 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 31, 2011.

SUMMARY: The Department of Commerce (“Department”) hereby publishes a list of scope rulings completed between October 1, 2010, and December 31, 2010. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of December 31, 2010. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–1394.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent notification of scope rulings was published on February 25, 2011. See *Notice of Scope Rulings,* 76 FR 10558 (February 25, 2011). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between October 1, 2010, and December 31, 2010, inclusive, and it also lists any scope or anticircumvention inquiries pending as of December 31, 2010. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between October 1, 2010, and December 31, 2010

People's Republic of China

A–570–501: Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China.

Requestor: A. Richard Tools Company; its two brushes made from Tampico vegetable fibers are not within the scope of the antidumping duty order; October 15, 2010.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China.

Requestor: The St. John Companies; four models of patient-belongings bags are not within the scope of antidumping duty order; October 1, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China.

Requestor: Target Corporation; its kid's accent table is not within the scope of the antidumping duty order; November 1, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China.

Requestor: Legacy Classic Furniture; its heritage court bench is within the scope of the antidumping duty order; November 22, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China.

Requestor: Emerald Home Furnishings; its granite and wood vanity are not within the scope of the antidumping duty order; December 20, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China.

Requestor: Delta Enterprise Corporation; its crib and changing table combo collection is not within the scope of the antidumping duty order; December 21, 2010.

A–570–909: Certain Steel Nails from the People's Republic of China.

Requestor: Mazel & Co., Inc.; its roofing nails falling within certain ASTM standard gaps are within the scope of the antidumping duty order; December 22, 2010.

Italy

A–475–801: Ball Bearings and Parts Thereof from Italy.

Requestor: Caterpillar, Inc.; turntable slewing rings used in hydraulic excavators (part numbers 1855622 and 1885072) manufactured by SKF RIV–SKF Officine di Villar Perosa S.p.A., SKF Industrie S.p.A., OMVP S.p.A., and Somecat S.p.A. (collectively "SKF Italy") are not within the scope of the antidumping duty order; October 21, 2010.

Taiwan

A–583–837: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Taiwan.

Requestors: Nan Ya Plastics Corporation, Ltd. and Hop Industries Corporation; Amorphous PET Film that is not biaxially-oriented is not within the scope of the antidumping duty order; December 22, 2010.

Multiple Countries

A–570–952/C–570–953/A–583–844: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan.

Requestor: A–Plus Products Inc.; certain narrow woven textile material is within the scope of the antidumping and countervailing duty orders; November 19, 2010.

A–570–952/C–570–953/A–583–844: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan.

Requestor: Money Hill Co., Ltd. c/o Party Art Enterprise Co. Ltd., and Golden Art Co., Ltd.; its cut-edge ribbon, to the extent it matches the exclusion language in the scope of the orders, is not within the scope of the antidumping and countervailing duty orders; November 24, 2010.

Anticircumvention Determinations Completed Between October 1, 2010, and December 31, 2010:

None.

Scope Inquiries Terminated Between October 1, 2010, and December 31, 2010

A–570–806: Silicon Metal from the People's Republic of China.

Requestor: Globe Metallurgical Inc.; whether silicon metal exported by Ferro-Alliages et Mineraux Inc. to the United States from Canada is within the scope of the antidumping duty order; requested September 30, 2008; initiated February 10, 2009; preliminary rescission ruling August 11, 2010; final rescission ruling November 29, 2010.

Anticircumvention Inquiries Terminated Between October 1, 2010, and December 31, 2010:

None.

Scope Inquiries Pending as of December 31, 2010

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China.

Requestor: Trade Associates Group, Ltd.; whether its candles (multiple designs) are within the scope of the antidumping duty order; requested June 11, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China.

Requestor: Sourcing International, LLC; whether its flower candles are within the scope of the antidumping duty order; requested June 24, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China.

Requestor: Sourcing International; whether its candles (multiple designs) are within the scope of the antidumping duty order; requested July 28, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China.

Requestor: Sourcing International; whether its floral bouquet candles are within the scope of the antidumping duty order; requested August 25, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China.

Requestor: Candym Enterprises Ltd.; whether its vegetable candles are within the scope of the antidumping duty order; requested November 9, 2009.

A–570–601: Tapered Roller Bearings from the People's Republic of China.

Requestor: Blackstone OTR LLC and OTR Wheel Engineering, Inc.; whether certain wheel hub units are within the scope of the antidumping duty order; requested March 3, 2010; initiated June 15, 2010.

A–570–601: Tapered Roller Bearings from the People's Republic of China.

Requestor: New Trend Engineering Limited; whether certain wheel hub units are within the scope of the antidumping duty order; requested March 5, 2010; initiated June 15, 2010; preliminary ruling December 13, 2010.

A–570–601: Tapered Roller Bearings from the People's Republic of China.

Requestor: Bosda International (USA) LLC and Kingdom Auto Parts Ltd.; whether certain wheel hub units are within the scope of the antidumping duty order; requested October 28, 2010.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China.

Requestor: Stork Craft Manufacturing; whether its infant (baby) Aspen and Lennox changing tables are within the scope of the antidumping duty order; initiated August 20, 2010; preliminary ruling December 13, 2010.

A–570–891: Hand Trucks from the People's Republic of China.

Requestor: Bond Street; whether the slide flat cart is within the scope of the antidumping duty order; requested December 8, 2006.

A–570–891: Hand Trucks from the People's Republic of China.

Requestor: WelCom Products; whether its MC2 Magna Cart, MCI Magna Cart and MCK Magna Cart are within the scope of the antidumping duty order; requested December 10, 2010.

A–570–912: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China.

Requestor: Wide Open Cycles Inc.; whether custom-built, size 14.9–24, pneumatic off-the-road mud racing tires built exclusively for all terrain vehicles are within the scope of the antidumping duty order; requested December 9, 2010.

A–570–929: Small Diameter Graphite Electrodes from the People's Republic of China.

Requestor: SGL Carbon LLC and Superior Graphite Co.; whether unfinished small diameter graphite electrodes produced in the People's Republic of China ("PRC") and completed and assembled in the United Kingdom are within the scope of the antidumping duty order; requested October 12, 2010, request amended November 30, 2010.

A–570–922/C–570–923: Raw Flexible Magnets from the People's Republic of China.

Requestor: InterDesign; whether its raw flexible magnets are within the scope of the antidumping duty and countervailing duty orders; requested March 26, 2010; initiated May 18, 2010.

A–570–922/C–570–923: Raw Flexible Magnets from the People's Republic of China.

Requestor: Medical Action Industries, Inc.; whether its raw flexible magnets and a surgical instrument drape are within the scope of the antidumping duty and countervailing duty orders; requested June 14, 2010; initiated September 13, 2010.

A–570–937/C–570–938: Citric Acid and Certain Citrate Salts from the People's Republic of China.

Requestor: Global Commodity Group LLC; whether its blends of citric acid and blends of citrate salts are within the scope of the antidumping duty and countervailing duty orders; requested August 9, 2010.

A–570–943/C–570–944: Oil Country Tubular Goods from the People's Republic of China.

Requestor: TMK IPSCO; whether all green tubes are within the scope of the antidumping duty order; requested September 30, 2010.

Multiple Countries

A–533–838/C–533–839/A–570–892: Carbazole Violet Pigment 23 from India and the People's Republic of China.

Requestor: Nation Ford Chemical Co., and Sun Chemical Corp.; whether finished carbazole violet pigment exported from Japan is within the scope of the antidumping duty and countervailing duty orders; requested February 23, 2010.

Anticircumvention Rulings Pending as of December 31, 2010:

A–570–836: Glycine from the People's Republic of China.

Requestor: Geo Specialty Chemicals, Inc. and Chattem Chemicals, Inc.; whether glycine from the PRC, when processed and re-packaged in India and exported as Indian-origin glycine, is circumventing the antidumping duty order; requested December 18, 2009; initiated October 28, 2010.

A–570–849: Certain Cut-to-Length Carbon Steel from the People's Republic of China.

Requestor: ArcelorMittal USA, Inc.; Nucor Corporation; SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills; whether certain cut-to-length carbon steel plate from the PRC that contains a small level of boron, involves such a minor alteration to the merchandise that is so insignificant that the plate is circumventing the antidumping duty order; requested February 17, 2010; initiated April 16, 2010.

A–570–894: Certain Tissue Paper Products from the People's Republic of China.

Requestor: Seaman Paper Company of Massachusetts, Inc.; whether certain imports of tissue paper from the Socialist Republic of Vietnam ("Vietnam") are circumventing the antidumping duty order through means of third country assembly or completion; requested February 18, 2010; initiated April 5, 2010.

A–570–918: Steel Wire Garment Hangers from the People's Republic of China.

Requestor: M&B Metal Products Inc.; whether certain imports of steel wire garment hangers from Vietnam are circumventing the antidumping duty order through means of third country assembly or completion of merchandise imported from the PRC; requested May 5, 2010; initiated July 22, 2010.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: April 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13385 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability or Record of Decision and Final Findings of Approvability to the Washington Coastal Zone Management Program

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management.

ACTION: Notice of Availability or Record of Decision and Final Findings of Approvability to the Washington Coastal Zone Management Program.

SUMMARY: NOAA's Office of Ocean and Coastal Resource Management (OCRM) announces availability of the Record of Decision (ROD) and Final Findings of Approvability (Findings) for OCRM's Approval of Amendments to the Washington Coastal Zone Management Program (WCZMP) final Environmental Impact Statement (EIS). On October 6, 2004, OCRM received the State of Washington's request to incorporate the State's new Shoreline Master Program Guidelines (Guidelines), Chapter 173–26 of the Washington Administrative Code (WAC) as an amendment to the WCZMP. The new Guidelines replace the previously repealed Chapter 173–16 of the WAC, the Shoreline Management Act Guidelines for Development of Shoreline Master Programs. The final EIS was released to the public for a 45-day comment period after the publication of a Notice of Availability in the **Federal Register** on November 12, 2010 (75 FR 69434). The ROD documents the selection of Alternative 1 (the NOAA preferred alternative) in the final EIS. The Findings make a final determination that the WCZMP, as amended by the October 6, 2004 WCZMP Amendment Document, still constitutes an approvable program and that procedural requirements of the Coastal Zone Management Act (CZMA) and its implementing regulations have been met. The ROD and Findings were signed by the Assistant Administrator, National Ocean Service (NOS) on May 16, 2011. Federal consistency applies to the revised WCZMP enforceable policies as of May 16, 2011.

ADDRESSES: A copy of the ROD and the Findings may be obtained from Helen Farr, Environmental Protection Specialist, National Oceanic and Atmospheric Administration, OCRM/CPD, Station 02–101, 55 Blackburn Drive, Gloucester, MA 01930, or *Helen.Farr@noaa.gov*, (978) 675–2170 (telephone), (978) 281–9301 (Fax). The documents are also available on OCRM's Web site at *http://coastalmanagement.noaa.gov/assessments/welcome.html.*

FOR FURTHER INFORMATION CONTACT: Bill O'Beirne, Pacific Regional Team Leader, National Oceanic and Atmospheric Administration, OCRM/CPD, N/ORM3, 1305 East-West Highway, Silver Spring, MD 20910, or *Bill.O'Beirne@noaa.gov,* (301) 713–3155, extension 160 (telephone), 301–713–4367 (Fax).

SUPPLEMENTARY INFORMATION: The following is a summary of the ROD and the Findings. On October 6, 2004, Washington formally submitted to NOAA a request to amend the WCZMP.

The amendment included the above-referenced Guidelines, which replaced the State's previously repealed Guidelines. The ROD selects final EIS Alternative 1, Approve Washington's Request for Amendment of the WCZMP. OCRM arrived at this decision while taking environmental, economic and agency statutory mission considerations into account, as discussed in greater detail in the ROD. The Findings provide an analysis of how the WCZMP, as amended, meets the requirements of the CZMA at 15 CFR part 923, including uses subject to management, special management areas, boundaries, authorities and organization, and coordination, public involvement, and national interest.

The following factors weighed most heavily in OCRM's decision: (1) Continued WCZMP approvability as amended by the proposed program change; and (2) impacts to the coastal resources and communities associated with the continued existence of the WCZMP. OCRM approved the WCZMP amendment because OCRM believes Alternative 1 meets the program change requirements of the CZMA, and will be the best opportunity for continued comprehensive protection of Washington's coastal resources. OCRM did not select either Alternative 2 (Deny Washington's Amendments) or Alternative 3 (No Action) because the

former could have resulted in repeal and termination of the WCZMP, and the latter would not have allowed for the best review of environmental concerns informed by public comment. Termination of the WCZMP would potentially lead to negative physical and socio-economic impacts to coastal resources associated with (1) Lack of application of Federal consistency requirements available only through participation in the national coastal zone management program; and (2) loss of federal funding for implementation of the WCZMP. The ROD did not identify any mitigation or monitoring measures since the final EIS found that many of the variables used to determine the effects were unforeseeable and based on decisions peripherally related to the Guidelines themselves.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: April 24, 2011.

David M. Kennedy,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–13387 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0658–XA461

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee and Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 15, 2011 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Fairfield Inn & Suites, 185 MacArthur Drive, New Bedford, MA 02740, *telephone:* (774) 634–2000; *fax:* (774) 634–2001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Committee and Advisory Panel will discuss draft revisions to the Magnuson-Stevens Act's National Standard 10 guidelines to promote safety at sea, and NOAA's draft enforcement priority-setting process; if applicable, the Coast Guard may report on comments it has received as part of its initiative to improve the overall compliance with and effectiveness of the Northeast Multispecies (Groundfish) Fishery Management Plan (FMP) regulations; the committee also may forward recommendations concerning several alternatives being considered for inclusion in Framework Adjustment 23 to the Scallop Fishery Management Plan (FMP). Other business may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13276 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XA462

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Skate Committee and Advisory Panel, in June, 2011, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, June 16, 2011 at 10 a.m.

ADDRESSES: This meeting will be held at the SpringHill Suites, 43 Newbury Street, US 1 North, Peabody, MA 01960; *telephone:* (978) 535–5000; *fax:* (978) 535–9610.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel and Skate Oversight Committee will discuss and recommend management measures to include in a 2012–13 skate specifications package, based on ABC specifications approved by the Scientific and Statistical Committee and recent fishery data. The Oversight Committee recommendations will be approved at the June 2011 Council meeting for a specification package or framework adjustment that will be finalized at the September 2011 Council meeting. The committee will also discuss and recommend modifications to the Council's fishery research strategic plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13277 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA451

Pacific Whiting; Advisory Panel and Joint Management Committee

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

ACTION: Notice; call for nominations.

SUMMARY: NMFS solicits nominations for the Advisory Panel (AP) and the Joint Management Committee (JMC) on Pacific Whiting called for in the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting. Nominations are being sought for at least 6, but not more than 12 individuals on the AP and 1 individual on the JMC to serve as United States representatives.

DATES: Nominations must be received by June 30, 2011.

ADDRESSES: You may submit nominations by any of the following methods:

- *E-mail: whiting.nominations.nwr@noaa.gov* Include 0648–XA451 in the subject line of the message.
- *Fax:* 206–526–6736, *Attn:* Frank Lockhart.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at 206–526–6142.

SUPPLEMENTARY INFORMATION: Title VI of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) entitled "The Pacific Whiting Act of 2006," (Whiting Act) implements the 2003 "Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting." Among other provisions, the Whiting Act provides for the establishment of an AP to advise the JMC on bilateral whiting management issues. An initial solicitation was published in the **Federal Register** on October 24, 2007 (72 FR 60317) and resulted in insufficient nominations to meet the requirements of the Act. Nominations are being sought to fill at least 6, but no more than 12 positions on the Pacific Whiting AP for terms of 4 years. The Whiting Act requires that appointments to the AP be selected from among individuals who are "(A) knowledgeable or experienced in the harvesting, processing, marketing, management, conservation, or research of the offshore whiting resource; and (B) not employees of the United States." Nominations are sought for any persons meeting these requirements.

Nominations are also being sought for a representative from the commercial sector of the offshore whiting fishery to serve on the JMC for a term not to exceed 4 years. The Whiting Act requires that appointments to the JMC be "representatives from among individuals who are knowledgeable or experienced concerning the offshore whiting resource." Nominations are sought for any persons meeting these requirements. Separate from the JMC representative for which nominations are sought through this notice, the JMC will also include one official from NOAA, one member from the Pacific Fishery Management Council, and one member appointed from a list submitted by the treaty Indian tribes with treaty fishing rights to the offshore whiting resource. Nomination packages for appointment to the AP or the JMC should include:

1. The name of the applicant or nominee and a description of his/her interest in Pacific whiting; and,

2. A statement of background and/or description of how the above qualifications are met.

The term of office for the Pacific Whiting AP members is not to exceed 4 years (48 months). The term of office for the Pacific Whiting JMC members is not to exceed 4 years (48 months), except that initial appointments may be 2 years. Members appointed to the AP and JMC will be reimbursed for necessary travel expenses in accordance with Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of Title 5. In the initial year of implementation, NMFS anticipates that up to 3 meetings of the AP and JMC will be required. In subsequent years, 1–2 meetings of the AP and JMC will be held annually. Meetings of the AP and JMC will be held in the United States or Canada. JMC and AP members will need a valid U.S. passport. The Pacific Whiting Act of 2006 also states that while performing their appointed duties as JMC or AP members, members "other than officers or employees of the United States Government, shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of Title 5 and chapter 171 of Title 28."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13377 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Certain Patent Petitions Requiring a Fee (formerly Patent Petitions Corresponding to the Fee under 37 CFR 1.17(f)).

Form Number(s): PTO/SB/17P, PTO/SB/23, PTO/SB/24a, PTO/SB/28 (EFS–Web only), and PTO/SB/140 (EFS–Web only).

Agency Approval Number: 0651–0059.

Type of Request: Revision of a currently approved collection.

Burden: 41,907 hours annually.

Number of Respondents: 39,015 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes the public approximately 5 minutes (0.08 hours) to complete the petition fee transmittals and 12 minutes (0.20 hours) to 12 hours to complete the petitions in this collection, depending on the nature of the information. This includes the time to gather the necessary information, prepare the petitions and petition fee transmittals, and submit them to the USPTO. The USPTO estimates that it takes the same amount of time (and possibly less time) to gather the necessary information, prepare the submission, and submit it electronically as it does to submit the information in paper form.

Needs and Uses: The public uses the information in this collection to petition for various actions under 37 CFR 1.17(f), (g), and (h), such as petitioning for a

suspension of the rules, requesting access to an assignment record, or requesting the withdrawal of an application from issue either before or after paying the issue fee. In addition, the public also uses these petitions to obtain copies of documents that have been submitted in a form other than that provided by the rules of practice, to request accelerated examination, to request abandonment of an application to avoid publication of said application, and to request an extension of time. The public uses the transmittal form to remit the required fees for the various petitions. The USPTO uses the information collected from the petitions to grant the various requests and to ensure that the proper fees have been remitted and are processed accordingly.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail: Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0059 copy request" in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 30, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: May 25, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–13366 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO) (Proposed Addition)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the revision of a currently approved collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 1, 2011.

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

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0012 comment" in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of William Griffin, Staff Attorney, Office of Enrollment and Discipline, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–4097; or by e-mail to *William.Griffin@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by 35 U.S.C. 2(b)(2)(D), which permits the United States Patent and Trademark Office (USPTO) to establish regulations governing the recognition and conduct of agents, attorneys or other persons representing applicants or other parties before the USPTO. This statute also permits the USPTO to require information from applicants that shows that they are of good moral character and reputation and have the necessary qualifications to assist applicants with the patent process and to represent them before the USPTO.

The USPTO administers the statute through 37 CFR 1.21, 11.5–11.14 and 11.28. These rules address the requirements to apply for the examination for registration and to demonstrate eligibility to be a registered attorney or agent before the USPTO. The Office of Enrollment and Discipline (OED) collects information to determine the qualifications of individuals entitled to represent applicants before the USPTO in the preparation and prosecution of applications for a patent. The OED also collects information to administer and maintain the roster of attorneys and agents registered to practice before the USPTO. Information concerning registered attorneys and agents is published by the OED in a public roster that can be accessed through the USPTO Web site.

The USPTO is introducing a new form, Request for Reasonable Accommodation, to facilitate an applicant's request for reasonable accommodation when they apply for the examination for registration to practice before the USPTO. A copy of this new form will be available at *http://www.uspto.gov/news/fedreg/fr_2011.jsp.* This information is currently collected without a form as part of the approved item, Application for Registration to Practice Before the United States Patent and Trademark Office (PTO Form 158). Applicants currently check Box 1a and then provide the necessary supporting documentation as an attachment (see the form with instructions and details on page 18 at *http://www.uspto.gov/ip/boards/ord/grb.pdf*). This new form will assist applicants in providing the USPTO with the correct and necessary supporting documentation through a standardized format.

To the extent possible, the applicant must provide detailed responses to the questions in the Applicant's Statement. The applicant must also provide a completed Licensed Health Care Professional's Statement and/or other acceptable evidence to support the claim.

An applicant who received a reasonable accommodation(s) for a prior registration examination must submit a new Applicant's Statement with each new Application for Registration (PTO Form 158). Depending on the type of impairment from which the applicant suffers, the applicant has the option of submitting a new Licensed Health Care Professional's Statement as well. In deciding whether to submit a new Licensed Health Care Professional's Statement, the applicant is advised to consider that the Agency's determination of both whether to grant an accommodation and what

accommodation(s) is appropriate is based on an assessment of the current impact of the applicant's disability on the testing activity. For example, if the applicant suffers from an impairment that is temporary or changes over time, it may not be possible for the Agency to assess whether an accommodation should be granted if the Licensed Health Care Professional's Statement is not current. For chronic or long-term conditions, a new Licensed Health Care Professional's Statement may not be necessary.

II. Method of Collection

An applicant should provide detailed responses to the questions in the Applicant's Statement. An applicant may use additional paper, if necessary, to answer the questions. The applicant must also provide a completed Licensed Health Care Professional's Statement and/or other acceptable medical evidence to support the claim. The completed package should be submitted to the United States Patent and Trademark Office's Office of Enrollment and Discipline with the completed Application Form 158. A Request for Reasonable Accommodation submitted separately from the Application Form 158 should be addressed to Mail Stop OED, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. For additional guidance, the Office of Enrollment and Discipline may be contacted at 571–272–4097.

III. Data

OMB Number: 0651–0012.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 40 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 1.5 hours to complete the Reasonable Accommodations Request, depending upon the situation.

Estimated Total Annual Respondent Burden Hours: 60 hours per year.

Estimated Total Annual Respondent Cost Burden: $19,500. Using the median hourly rate for attorneys in private firms of $325, the USPTO estimates $19,500 per year in cost burden associated with respondents. This is a fully loaded hourly rate.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Request for Reasonable Accommodation	1.5	40	60
Total		40	60

Estimated Total Annual (Non-hour) Respondent Cost Burden: $31. There are no maintenance or record keeping costs, as well as no filing fees associated with this information collection. However, there is annual (non-hour) cost burden in the form of postage costs.

Although the Reasonable Accommodation Requests are submitted to the USPTO along with the Application for Registration to Practice Before the USPTO, they are additional pages of information and will require additional postage. These documents may be submitted to the USPTO by first-class mail through the United States Postal Service. The USPTO estimates the submission will weigh 3 ounces and that the average first-class postage is 78 cents. Therefore the USPTO estimates that it will receive 40 responses per year, for a total of $31 (40 × $0.78) in postage costs.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 25, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–13369 Filed 5–27–11; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Commission of Fine Arts; Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for June 16, 2011, at 10 a.m. in the Commission offices at the National Building Museum,Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC, 20001–2728. Items of discussion may include buildings, parks and memorials. Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated May 23, 2011, in Washington, DC.

Thomas Luebke,

AIA Secretary.

[FR Doc. 2011–13349 Filed 5–27–11; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To License Government-Owned Inventions; Intent To License Exclusively

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Army. The US Army Edgewood Chemical Biological Center and the US Army Research Laboratory intend to license these inventions exclusively to ANP Technologies, Inc., a Delaware Corporation with principal

offices at 824 Interchange Boulevard, Newark, DE 19711. The inventions to be licensed are U.S. Patent No. 6,716,450, issued on April 6, 2004. "Enhancing Protein Activity through Nanoencapsulation," and US Patent No. 6.773,928, issued on August 10, 2004. "Compositions and methods for enhancing bioassay performance."

ADDRESSES: Requests for more information and/or objections should be directed to Eric McGill *telephone:* 410–436–8467, *eric.s.mcgill@us.army.mil,* US Army Edgewood Chemical Biological Center (ECBC), AMSRD–ECB–PI–BP–TT, Bldg E3330/Rm 241 5183 Blackhawk Road, APG, MD 21010–5424. Any requests of objections should be made within 15 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dhirajlal Parekh, Office of Research and Technology Applications, US Army Edgewood Chemical Biological Center, AMSRD–ECB–PI–BP–TT, Bldg E3330/ Rm 241 5183 Blackhawk Road, APG, MD 21010–5424, *telephone:* 410–436–8400, *e-mail: dhirajlal.parekh@us.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–13347 Filed 5–27–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Wednesday, June 22, 2011.

3. *Time:* 12 p.m.–3 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Senate Dirksen Building 562, Constitution Avenue, Washington, DC 20515.

5. *Purpose of the Meeting:* This is the 2011 Spring Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: Military Program, Physical Program, Intercollegiate Athletics and Fiscal Year 2011 Budget.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

Brenda S. Bowen.

Army Federal Register Liaison Officer.

[FR Doc. 2011–13346 Filed 5–27–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Combined Operational Plan, Miami-Dade County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Combined Operational Plan (COP) is an integrated operational plan for Water Conservation Area 3 (WCA–3), Everglades National Park (ENP) and the South Dade Conveyance System (SDCS), that includes the completed modifications of the Central and Southern Florida (C&SF) Project as described by the Modified Waters Deliveries to Everglades National Park and the Canal-111 South Dade (C–111SD) projects. The purpose of COP is to define water management operations for the completed MWD and C–111SD projects that are consistent with their respective project purposes as defined by their authorizing legislation and further refined by their respective general design memorandum (GDM) and general reevaluation report (GRR). This integrated operational plan will complete the MWD project.

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Dr. Gina Ralph at 904–232–2336 or e-mail at *Gina.P.Ralph@usace.army.mil.*

SUPPLEMENTARY INFORMATION: a. Planning objectives include (1) Improving water deliveries into ENP and taking steps to restore natural hydrologic conditions in ENP to the extent practicable by: *Timing:* Changing the schedule of water deliveries so that it fluctuates in consonance with local meteorological conditions, including providing for long term and annual variation in ecosystem conditions in the Everglades; *Location:* Restoring Northeast Shark Slough as a functioning component of the Everglades hydrologic system; *Volume:* Adjusting the magnitude of water discharged to ENP to minimize the effects of too much or too little water. (2) Protecting the intrinsic ecological values associated with the WCA–3, Shark River Slough and ENP; (3) restoring hydrologic conditions in Taylor Slough, Rocky Glades and the eastern Panhandle of ENP; (4) eliminating damaging freshwater flows to Manatee Bay/Barnes Sound and increasing flows to northeast Florida Bay from the lower C–111; (5) including consideration of cultural values and tribal interests and concerns within WCA–3 and ENP; (5) and exploring opportunities for enhancing recovery of federally and state listed species, consistent with restoration objectives, the USACE's authorities for MWD and C–111 projects and operational considerations.

b. A scoping letter will be used to invite comments from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

c. A scoping meeting will be held on June 28, 2011 from 6 to 9 p.m. at the Miami-Dade College, West Campus located at 3800 NW. 115th Avenue,

Doral, FL. Assistance for individuals with special needs or language translation will be available as needed by calling 904–232–1789.

d. All alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

e. The Draft Environmental Impact Assessment is expected to be available for public review in the 1st quarter of 2013.

Dated: May 18, 2011.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2011–13348 Filed 5–27–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications no later than July 15, 2011.

ADDRESSES: Mail completed applications to U.S. Army Corps of Engineers, Omaha District (Attn: MRRIC), 1616 Capitol Avenue, Omaha, NE 68102–4901 or e-mail completed applications to *info@mrric.org.* Please put "MRRIC" in the subject line.

FOR FURTHER INFORMATION CONTACT: Mary S. Roth, 402–995–2919.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and Section 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *http://www.MRRIC.org.*

Purpose and Scope of the Committee. The duties of the MRRIC cover two areas:

1. The Committee provides guidance to the Corps, and affected Federal agencies, State agencies, or Native American Indian Tribes on a study of the Missouri River and its tributaries to determine the actions required to mitigate losses of aquatic and terrestrial habitat, to recover federally listed species protected under the Endangered Species Act, and to restore the river's ecosystem to prevent further declines among other native species. This study is identified in Section 5018(a) of the WRDA. It will result in a single, comprehensive plan to guide the implementation of mitigation, recovery, and restoration activities in the Missouri River Basin. This plan is referred to as the Missouri River Ecosystem Restoration Plan (MRERP). For more information about the MRERP go to *http://www.MRERP.org.*

2. The MRRIC also provides guidance to the Corps with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *http://www.MoRiverRecovery.org.*

3. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. In accordance with the Charter for the MRRIC, stakeholder membership is limited to 28 people, with each member having an alternate. Members and alternates must be able to demonstrate that they meet the definition of "stakeholder" found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Agriculture;
b. Conservation Districts;
c. Fish and Wildlife;
d. Flood Control;
e. Hydropower;
f. Irrigation;
g. Navigation;
h. Recreation;
i. Water Supply; and
j. At Large;

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, they must submit a renewal letter and related materials as outlined in the "Streamlined Process for Existing Members" portion of the document

Process for Filling MRRIC Stakeholder Vacancies (*http://www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the Federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee will not be reimbursed by the Federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities and are not employees of federal agencies, tribes, or state agencies, may apply for stakeholder membership on the MRRIC. Applications for stakeholder membership may be obtained electronically at *http://www.MRRIC.org.* Applications may be e-mailed or mailed to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person is qualified to represent;

2. A written statement describing how the applicant meets the criteria for membership (described below) and how their contributions will fulfill the roles and responsibilities of MRRIC;

3. Evidence, in the form of a written endorsement letter, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 15, 2011, at the location indicated (see **ADDRESSES**). Full consideration will be given to all complete applications received by the specified due date.

Persons wishing to apply as stakeholder members are strongly encouraged to identify an appropriate individual to serve as his/her alternate. Alternates should apply with the individual seeking membership in the same interest area. Alternates must apply in the same manner as stakeholder members and should include a recommendation from a member applicant as well as the interest group(s) they represent.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the *Process for Filling MRRIC Stakeholder Vacancie*s document (*http://www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstrations of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Ability to contribute to the overall balance of representation on MRRIC.
- Agreement to participate in collaboration training as a condition of membership.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–13345 Filed 5–27–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before June 30, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 24, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision

Title of Collection: National Title I Study of Implementation and Outcomes: Early Childhood Language Development (ECLD)

OMB Control Number: 1850–0871

Agency Form Number(s): N/A

Frequency of Responses: once

Affected Public: Not-for-profit institutions

Total Estimated Number of Annual Responses: 24,120

Total Estimated Annual Burden Hours: 9,385

Abstract: The study is being conducted as part of the National Assessment of Title I, mandated by Title I, Part E, Section 1501 of the Elementary and Secondary Education Act. The study is designed to identify school programs and instructional practices associated with improved language development, background knowledge, and comprehension outcomes for children in prekindergarten through third grade. Analyses will estimate the associations between instructional programs and practices and student outcomes to inform future rigorous evaluation of strategies to improve language and comprehension outcomes for at-risk children in these early years of school. We will identify 10 locations

for the study, including seven-eight of the largest urban school districts and two-three states with large Title I populations. Within each of the 10 locations, we will select five high-performing and five low-performing schools. Within each school, we will randomly sample an average of three classrooms per grade. Within each classroom, we will randomly sample eight students. Students will be assessed in fall and spring. Principals, teachers, and parents will be surveyed once, and students' classrooms will be observed twice in the fall and twice in the spring. Information from students' school records will be extracted at the end of the school year.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4494. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–13293 Filed 5–27–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before June 30, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov with a cc:* to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 25, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records 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: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 52.

Total Estimated 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 information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 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 the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–13391 Filed 5–27–11; 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, Privacy, Information and Records 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 August 1, 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, Information Management and Privacy 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: May 24, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of English Language Acquisitions

Type of Review: Extension

Title of Collection: Foreign Language Assistance Program for Local Educational Agencies: Grantee Performance Report

OMB Control Number: 1885–0554

Agency Form Number(s): N/A

Frequency of Responses: Semi-Annually

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies

Total Estimated Number of Annual Responses: 114

Total Estimated Number of Annual Burden Hours: 4,674

Abstract: The grantee performance report will collect semi-annual information from grantees regarding their project service, goals, objective, performance and budget. Respondents are Local Educational Agencies grantees. The data will be used for reporting on the program's Government Performance Results Act measures, project monitoring, and program planning. The U.S. Department of Education's Budget Service will use these data for making program budget recommendations to Congress.

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 4630. 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, D.C. 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. 2011–13294 Filed 5–27–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Family Education Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice inviting guaranty agencies to submit proposals to participate in a Voluntary Flexible Agreement.

SUMMARY: The Secretary invites guaranty agencies with agreements to participate in the Federal Family Education Loan (FFEL) Program to submit proposals to enter into a Voluntary Flexible Agreement (VFA) with the Secretary, as authorized by section 428A of the Higher Education Act of 1965, as amended (HEA). Guaranty agencies whose proposals are accepted will operate under the requirements of the VFA in lieu of the guaranty agency agreements established under sections 428(b) and (c) of the HEA.

The intent of this invitation is for the Secretary to receive proposals from guaranty agencies or from teams of guaranty agencies, that will lead to the development of VFAs that will enhance the integrity and stability of the FFEL Program, improve services to students, schools and lenders, and use Federal resources more cost-effectively and efficiently. The Secretary is particularly interested in receiving proposals that eliminate poorly aligned incentives in

the current guaranty agency structure as well as the conflicts of interest that may potentially exist when a guaranty agency is responsible for both default prevention and default collections.

The Secretary invites the submission of either individual proposals from a single guaranty agency or joint proposals from teams of guaranty agencies. However, under the Secretary's planned reorganization of guaranty agency responsibilities, as described in the "Scope of the VFAs" section of this notice, it is likely that joint proposals would result in greater efficiencies and ease of implementation. A joint proposal, if approved, will result in separate, but complementary, VFAs for each of the agencies in the team.

A guaranty agency may submit more than one proposal in response to this notice. However, an agency will have only one VFA, that could provide that the agency assume a number of different guaranty agency activities as described in the GA Responsibility Areas section of this notice.

This notice provides information on the scope and conditions of VFA proposals that the Secretary is seeking, the procedures for the submission of VFA proposals, the information that must be included in a VFA proposal submitted in response to this notice, and the steps the Secretary will take when finalizing a VFA.

DATES: *Deadline for submission of a VFA proposal:* August 1, 2011.

ADDRESSES: VFA proposals must be submitted via e-mail to the following *e-mail address: vfateam@ed.gov.*

Instructions for Submitting Proposals: Each VFA proposal must be accompanied by a cover letter. The cover letter for an individual proposal submitted by one guaranty agency must be on the guaranty agency's letterhead, signed by the chief executive officer of the guaranty agency, and include the name, mailing address, e-mail address, Fax number, and telephone number of a contact person at the guaranty agency.

While the cover letter for a joint proposal submitted by a team of guaranty agencies may be on the letterhead of one of the guaranty agencies included in the proposal, it must be signed by the chief executive officer of each of the guaranty agencies included in the joint proposal. The letter must also include the name, mailing address, e-mail address, Fax number, and telephone number of a contact person at each of those guaranty agencies.

The cover letter and the proposal are to be submitted as Adobe Portable Document (PDF) attachments to an e-mail message sent to the e-mail address provided in the **ADDRESSES** section of this notice. The "Subject" line of the e-mail must read "VFA Proposal-2011".

FOR FURTHER INFORMATION CONTACT: Diane McLaughlin, U.S. Department of Education, Federal Student Aid, room 101J2, 830 First Street, NE., Washington, DC 20002. *Telephone:* (202) 377–3748 or by *e-mail: diane.mclaughlin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339. Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed above.

SUPPLEMENTARY INFORMATION:

Voluntary Flexible Agreements

Under sections 428(b) and (c) of the HEA, guaranty agencies perform certain roles in the FFEL Program pursuant to agreements with the Secretary. Section 428A of the HEA authorizes the Secretary to enter into VFAs with guaranty agencies to replace the agreements required under sections 428(b) and (c) of the HEA. The purpose of a VFA is to permit a more flexible agreement between the Secretary and the guaranty agency than the standard agreements. The VFA authority allows the Secretary and the guaranty agency to develop, utilize, and evaluate alternate ways of ensuring that the responsibilities of FFEL Program guaranty agencies are fulfilled in the most cost-effective and efficient manner possible. The overall cost to the Federal government cannot increase as a result of the VFAs.

As part of a VFA with a guaranty agency, the Secretary may waive or modify statutory and regulatory requirements as necessary, except that the Secretary may not waive any statutory requirements related to the terms and conditions attached to student loans or to default claim amounts paid to lenders.

The HEA specifies that a VFA may include provisions related to the responsibilities of a guaranty agency with respect to: Administering the issuance of insurance on loans; monitoring student loan insurance commitments; undertaking default aversion activities; reviewing lender default claims; collecting defaulted loans; adopting internal systems of accounting and auditing that are acceptable to the Secretary and result in timely, accurate, and auditable reporting to the Secretary; monitoring institutions and lenders; and engaging in informational outreach to schools and students in support of access to higher education.

The VFA may specify the fees the Secretary will pay, in lieu of revenues the guaranty agency would otherwise receive, and other funds that the agency may receive and retain. The VFA may also specify: The use of net revenues for other activities in support of postsecondary education; the performance standards that will be used to assess the agency's performance under the VFA and the consequences of the agency's failure to meet those standards; the circumstances under which a VFA may be terminated by the Secretary in advance of any established termination date; other student loan-related businesses the Secretary will permit the guaranty agency to engage in, and any other provisions the Secretary believes are necessary to protect the United States from unreasonable risk of loss.

Pursuant to section 428A(b)(2)(B) of the HEA, the Secretary's costs under the VFAs resulting from this notice may not, in the aggregate, exceed the costs the Secretary would have incurred absent the VFAs. Therefore, to finalize the VFAs the Secretary must conclude that the total projected cost for all of the VFAs will not increase Federal costs compared to the projected costs under the original agreements. As the VFAs are implemented, the Secretary will monitor, at least quarterly, the Federal costs of the VFAs to ensure that the VFAs continue to meet this statutory cost requirement.

The Secretary has exercised VFA authority in the past by entering into VFAs with five guaranty agencies. The last of those VFAs expired on September 30, 2008. A report on that earlier VFA initiative can be found at *http://www.fp.ed.gov/PORTALSWebApp/fp/proj2.jsp.*

Impact of ECASLA and the SAFRA Act

The Secretary is requesting proposals for VFAs at this time because of significant legislative changes made to the FFEL Program over the past few years.

The Ensuring Continued Access to Student Loan Act of 2008, as amended (Pub. L. 110–227) (ECASLA), authorized the Secretary to create programs to allow FFEL loan holders to sell certain outstanding FFEL Program loans to the Secretary. Under those programs, FFEL Program lenders sold more than 24.5 million loans to the Secretary. As a result, the outstanding portfolio of FFEL Program loans under guarantee has declined by more than $100 billion,

reducing both the short-term and long-term revenues of guaranty agencies.

The SAFRA Act, part of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), ended, as of July 1, 2010, the origination of new FFEL Program loans. As of July 1, 2010, all Stafford, PLUS, and Consolidation loans are being made under the William D. Ford Federal Direct Loan (Direct Loan) Program. The end of new FFEL Program loan originations necessarily changes the types and scope of guaranty agency activities. It also means that FFEL guaranty agencies will not have the estimated $75 billion of annual new loan volume that otherwise would have been added to their portfolios, thus resulting in further reductions to guaranty agency revenues.

As a result of the ECASLA loan sales and the end of new FFEL Program loan originations because of the SAFRA Act, the total dollar amount of the FFEL Program guaranty agency portfolio has, as of December 31, 2010, been reduced by more than 20 percent from its total on December 31, 2008. As noted, this revenue reduction jeopardizes the guaranty agencies' ability to meet their FFEL Program responsibilities. In light of these circumstances, the Secretary believes that it is appropriate to establish new guaranty agency structures and financing mechanisms that will protect the Federal fiscal interest in the outstanding FFEL Program portfolio.

The Secretary also wants to ensure that guaranty agencies are able to continue to provide high quality services to borrowers, lenders, and schools while supporting the important responsibilities that they have in the areas of default prevention, outreach, and oversight.

Scope of the VFAs

The Secretary intends to use VFAs to reorganize guaranty agency responsibilities among VFA participating agencies in a way that will ensure that borrowers, students, and lenders receive needed services in a manner that is cost-effective for the taxpayer, eliminates the potential for conflicts of interest, and fully supports the FFEL Program. The VFAs will also provide important operational, fiscal, and program information that the Secretary may find beneficial in the administration of the Federal student financial assistance programs authorized by Title IV of the HEA.

The Secretary expects that the VFAs will reduce guaranty agency operating costs from resulting economies of scale and from the specific programmatic strengths of individual agencies. One way to achieve economies of scale is by consolidating FFEL defaulted loan collection responsibilities among a small number of guaranty agencies. The Secretary expects that such consolidation would significantly reduce program costs for collections and related activities while providing resources to support other guaranty agency responsibilities.

GA Responsibility Areas: The Secretary believes that an effective way to reorganize guaranty agency responsibilities is to arrange those responsibilities into the four distinct areas identified in this notice and described as "GA Responsibility Areas." The activities and responsibilities included in each of the GA Responsibility Areas will be assigned to guaranty agencies so as to build on the particular strengths of an agency and reduce costs through efficiencies and economies of scale. Under this approach, each guaranty agency that participates under a VFA, as a result of the process announced in this notice, will assume responsibility for the activities included in one or more of the GA Responsibility Areas. The guaranty agency will likely be responsible for those activities not only for its own loan portfolio and service area but also, if included in the VFA, for the portfolio and service area of one or more other guaranty agencies participating under a VFA with the Secretary. At the same time, the guaranty agency would relinquish its responsibility for GA Responsibility Area activities assumed by other guaranty agencies under their respective VFAs.

A GA Responsibility Area will only be assigned to a guaranty agency if the guaranty agency has demonstrated competency in performing the activities associated with that GA Responsibility Area.

The Secretary has established the following four GA Responsibility Areas for the purpose of soliciting proposals from, and finalizing VFAs with, guaranty agencies. As noted elsewhere in this notice, VFA proposals may be submitted by one guaranty agency on its own behalf or by a team of guaranty agencies submitting a joint proposal. A joint proposal should clearly indicate which agency or agencies within the group will assume which GA Responsibility Area activities.

As discussed below, each VFA proposal must include the types of data and measurements the guaranty agency suggests could be used to evaluate its performance under the VFA. The discussion of each GA Responsibility Area below includes examples of the types of data and measurements that the Secretary believes may be appropriate. Each VFA ultimately executed by the Department and the guaranty agency will include the specific data and measurements that will be used to evaluate the success of the VFA.

GA Responsibility Area I—Lender Claims Review, Lender Claims Payment, and Collections

A guaranty agency that assumes, as part of its VFA, GA Responsibility Area I will perform the related activities for its own loan portfolio and for the portfolios of other guaranty agencies participating under a VFA with the Secretary. Thus, that guaranty agency must have the managerial and operational capacity, including significant and demonstrable scalability in its systems and other infrastructure, to assume expanded claims review, claims payment, and collections responsibilities. The guaranty agency must have efficient and cost-effective systems and processes that will result in significant cost savings when applied to the larger portfolio of loans for which it would be responsible.

A guaranty agency that assumes GA Responsibility Area I may not also assume GA Responsibility Area II (Delinquency and Default Prevention and Management). This restriction is intended to eliminate the potential for conflicts of interest that may exist when a guaranty agency is responsible for default aversion on loans for which it may also be responsible for default collections if its default prevention efforts are not successful. For similar reasons, a guaranty agency that assumes GA Responsibility Area I may not also assume GA Responsibility Area IV (Lender/Servicer Oversight).

A proposal to assume GA Responsibility Area I must include a suggested set of specific objectives, activities, and performance measures that the Secretary could use to evaluate the guaranty agency's effectiveness in meeting the proposed objectives by carrying out the proposed activities.

The proposal must include a description of the specific data that the guaranty agency will provide to the Secretary for the evaluation. While proposals may include output measures, they should include specific and measurable outcomes. For example, an agency might propose to measure its success in working with borrowers to resolve defaults after the default claim was filed by the lender but before the agency paid the claim. This type of outcome measure is preferable to only measuring output in the form of counting the number of days it took the

agency to review a claim and make the insurance payment to the lender.

An agency could also measure the borrower experience in terms of satisfaction with the collection communications from the agency (or its collection contractors) and the borrower's continued compliance with an established payment plan. Again, this type of outcome measure is preferable to an output measure such as the number of borrowers contacted.

A joint proposal submitted by a team of guaranty agencies must specifically identify which guaranty agency within the group, if any, the team requests the Secretary to consider for assumption of Guaranty Agency Responsibility Area I. If one of the guaranty agencies in a team wishes to assume GA Responsibility Area I and others in the team GA Responsibility II or GA Responsibility Area IV, the proposal must show how the participating guaranty agencies will avoid potential conflicts of interest within the team with regard to collections and default aversion and lender oversight.

GA Responsibility Area II (Delinquency and Default Prevention and Management)

A guaranty agency that assumes, as part of its VFA, GA Responsibility Area II for itself, and if included in the VFA, for the portfolios and service areas of other guaranty agencies participating under a VFA with the Secretary, must have the expertise and capacity to develop, implement, and evaluate a delinquency and default prevention and management program in an efficient and cost-effective manner. Any guaranty agency requesting GA Responsibility Area II must be able to demonstrate that it has these capabilities and that it has a plan for a robust delinquency and default prevention program.

A proposal to assume GA Responsibility Area II must include a suggested set of specific objectives, activities, and performance measures that the Secretary could use to evaluate the guaranty agency's effectiveness in meeting the proposed objectives by carrying out the proposed activities.

The proposal must include a description of the specific data that the guaranty agency will provide to the Secretary for the evaluation. The proposal should include outcomes not just outputs. For example, an agency might measure the extent to which borrowers understand their rights, obligations, and responsibilities as Federal student loan borrowers. This might include monitoring the repayment performance of delinquent borrowers who received intervention services from the agency or measuring whether borrowers, based upon the agency's communications and other intervention strategies, chose a more appropriate repayment plan for their financial situation.

These types of outcome measures are preferable to only providing a routine output measure of counting the number of delinquent borrowers contacted.

An agency could also work with postsecondary institutions to develop or enhance, and measure the effectiveness of student loan counseling programs and other financial counseling tools through students' demonstrated understanding of the implications of borrowing to meet postsecondary educational expenses, including methods for managing student loans and other financial transactions. An example of student behavior that can be measured to demonstrate that a student understands these issues might be measured by whether the student has provided the institution with information that will allow the institution to deposit the student's Title IV credit balances into a no-cost to the student account at a bank, credit union, or other federally insured account.

These types of outcome measures are preferable to only providing an output measure such as the number of counseling sessions held or the number of borrower "hits" on a Web site.

A joint proposal from a team of guaranty agencies must specifically identify which guaranty agency or guaranty agencies the team requests the Secretary to consider for Guaranty Agency Responsibility Area II.

GA Responsibility Area III (Community Outreach, Financial Literacy and Debt Management, School Training and Assistance, and School Oversight)

A guaranty agency that assumes, as part of its VFA, GA Responsibility Area III must have the expertise and capacity to develop, implement, and evaluate a strategy to perform one or more of the GA Responsibility Area III activities in an efficient and cost-effective manner. The guaranty agency must be able to demonstrate that it has these capabilities and has a plan for a comprehensive and scalable community outreach, financial literacy, training, and/or school oversight program for its current service area and, if included in the VFA, the service areas of other guaranty agencies participating under a VFA with the Secretary.

While not every guaranty agency performing GA Responsibility Area III activities must carry out every allowable function independently, any joint proposals must demonstrate how all of the functions will be carried out by the team (*e.g.,* one guaranty agency may carry out financial literacy efforts exclusively, while other guaranty agencies in the team perform the other GA Responsibility Area III functions).

A proposal to assume GA Responsibility Area III must include a suggested set of specific objectives, activities, and performance measures that the Secretary could use to evaluate the guaranty agency's effectiveness in meeting the proposed objectives by carrying out the proposed activities.

The proposal must include a description of the specific data that the guaranty agency will provide to the Secretary for the evaluation. The proposal should include outcomes not just outputs. For example, an agency might measure the effectiveness of its outreach and education activities by measuring the number of low-income, first-generation, and other under-represented students participating in postsecondary education. Indicators of effectiveness might include determining the number of such students who apply for admission to postsecondary institutions, complete and submit a FAFSA, apply for scholarships and other non-Federal assistance, exhaust all Federal and State aid options before taking private education loans, and enroll in and successfully complete a postsecondary education program of study. An agency could also determine the number of such students who indicate that they compare institutions, including financial aid awards, before selecting an institution and an academic program. These examples of outcome measures would be preferable to only providing an output measure such as the number of students or families contacted, the number of publications distributed, or the reach of a media campaign.

Another example of an outcome measure for GA Responsibility Area III might be evaluating the effectiveness of the agency's training with and oversight of postsecondary institutions. Such an evaluation might assess whether and to what extent, as a result of the agency's training and intervention, the institution's understanding of and compliance with the requirements of the Title IV student aid programs improved. This type of outcome measure is preferable to only providing an output measure such as the number of training activities conducted or the number of program reviews completed.

A joint proposal submitted by a team of guaranty agencies must specifically identify which guaranty agency or guaranty agencies the team requests the

Secretary to consider for GA Responsibility Area III.

GA Responsibility Area IV (Lender and Lender Servicer Oversight)

A guaranty agency that assumes, as part of its VFA, GA Responsibility Area IV must have the expertise and capacity to perform lender and lender servicer oversight in an efficient and cost-effective manner. The guaranty agency must be able to demonstrate that it has this capability and has a plan for a comprehensive and scalable oversight program for lenders assigned to the agency under the VFA.

A proposal to assume GA Responsibility Area IV must include a suggested set of specific objectives, activities, and performance measures that the Secretary could use to evaluate the guaranty agency's effectiveness in meeting the proposed objectives by carrying out the proposed activities. The proposal must also include an evaluation plan and the specific data that the guaranty agency will provide to the Secretary for the evaluation. Where possible, the evaluation plan should include outcomes not just outputs. For example, an agency might assess whether, and to what extent, as a result of the agency's intervention, the lender's or servicer's understanding of and compliance with FFEL Program requirements has improved. This type of outcome measure is preferable to output measures such as the number of oversight activities completed or the number of findings reported.

A joint proposal submitted by a team of guaranty agencies must specifically identify which guaranty agency or guaranty agencies the team wishes the Secretary to consider for GA Responsibility Area IV.

Combinations of GA Responsibility Areas

A VFA proposal may include a request that a guaranty agency assume more than one GA Responsibility Area. For example, a proposal may request that the guaranty agency assume GA Responsibility Area II (Delinquency and Default Prevention and Management) and GA Responsibility Area IV (Lender and Lender Servicer Oversight), or a submission may propose that the guaranty agency assume GA Responsibility Area II (Delinquency and Default Prevention and Management) and GA Responsibility Area III (Community Outreach, Financial Literacy and Debt Management, School Training and Assistance, and School Oversight).

However, as noted earlier in this notice, a guaranty agency that assumes GA Responsibility Area I (Lender Claims Review, Lender Claims Payment, and Collections) may not also assume GA Responsibility Area II (Delinquency and Default Prevention and Management) or GA Responsibility Area IV (Lender and Lender Servicer Oversight).

Secretary's Oversight

The Secretary will enhance oversight and monitoring of guaranty agencies—including those that have not entered into VFAs—to determine their continued financial viability and operational capacity to properly perform their FFEL Program responsibilities.

Each guaranty agency that participates under a VFA resulting from this notice will be subject to oversight by the Secretary. This oversight will include, at a minimum, requirements for the guaranty agency to submit operational status reports, financial reports, performance metrics, and the results of the evaluations discussed in the Information to be Included with the VFA Proposal section of this notice.

Oversight will also include monitoring to ensure that the guaranty agency meets its responsibilities under the Federal Information Security Management Act of 2002 (FISMA).

A guaranty agency that does not enter into a VFA with the Secretary will continue to operate under the regular guaranty agency agreements of sections 428(b) and (c) of the HEA. However, because of the previously discussed financial and operational impacts on guaranty agencies of ECASLA and the SAFRA Act, the Secretary will carefully monitor such guaranty agencies to determine their continued financial viability and operational capacity to properly perform their FFEL Program responsibilities. This includes monitoring to ensure that the agencies meet their responsibilities under FISMA.

Financing of VFA Activities

Using the statutory authority for VFAs in section 428A of the HEA, the Secretary intends to modify the process for, and the types and amount of, payments provided to guaranty agencies participating under a VFA.

The Secretary expects that the reorganization of responsibilities among guaranty agencies under the VFAs as discussed in this notice will result in significant economies of scale and increased efficiencies. This will be especially true for those guaranty agencies assigned to GA Responsibility Area I (Lender Claims Review, Lender Claims Payment, and Collections). A portion of the amounts available from collections generated by the fewer number of guaranty agencies that will be assigned to GA Responsibility Area I, along with amounts that otherwise would have been provided to VFA participating guaranty agencies in the form of Account Maintenance Fees and Default Aversion Fees, will be used by the Secretary to support the activities of guaranty agencies assuming GA Responsibility Areas II, III, and IV.

All payments to each guaranty agency will be made by the Secretary according to the terms of the financing plan included in the VFA with that agency. No payments will be made, directly or indirectly, from one guaranty agency to another and no guaranty agency may share its income under the VFA with another guaranty agency without the approval of the Secretary.

Therefore, as noted in the following *Information to be Included with the VFA Proposal* paragraphs, proposals that identify a guaranty agency that wishes to assume GA Responsibility Area I activities must provide a performance-based financing structure that includes a comparison of current cash flows to projected cash flows that demonstrates increased cost-effectiveness.

Proposals that identify a guaranty agency that wishes to assume activities in GA Responsibility Area II, GA Responsibility Area III, or GA Responsibility Area IV must include a proposed performance-based financing plan describing what each of the activities proposed will cost and how the guaranty agency expects to cover those costs.

Guaranty agencies proposing to assume GA Responsibility Area II and/or GA Responsibility Area III activities are encouraged to include in their proposals pricing strategies that include leveraging activities and costs in partnership with other, non-guaranty agency entities or organizations.

Request for Proposals

Guaranty agencies with agreements with the Secretary under sections 428(b) and (c) of the HEA wishing to enter into a VFA with the Secretary as outlined in this notice must submit a written proposal by the date established in the **DATES** section of this notice.

The Secretary believes that a comprehensive proposal can be presented in approximately 25 pages, excluding any tables, charts, or other similar attachments.

Information To Be Included With the VFA Proposal

Each proposal for a VFA in response to this notice must include, for each of

the GA Responsibility Areas the guaranty agency or team of guaranty agencies wishes to assume, a discussion of the following:

- The specific objectives the guaranty agency or team proposes to accomplish.
- The specific activities the guaranty agency or team of guaranty agencies proposes to perform to meet those objectives.
- Where possible, summaries of and links to research providing justification for specific activities the guaranty agency or team of guaranty agencies proposes to perform. This information is particularly valuable for activities included in GA Responsibility Areas II and III.
- An implementation plan for carrying out the specific activities proposed for each GA Responsibility Area.
- A description of the expertise and accomplishments the guaranty agency or team of guaranty agencies has for the activities of each of the GA Responsibility Areas requested.
- How the proposed VFA would improve services to borrowers, lenders, schools, and the Department of Education.
- The specific performance metrics the guaranty agency or team of guaranty agencies proposes to use to measure benefits of the VFA to borrowers, lenders, students, and taxpayers.
- Plans for an evaluation scheme for the activities assigned to the guaranty agency or team of guaranty agencies, including, if feasible, plans for the evaluations to be conducted by an independent agency or organization not affiliated with the guaranty agency or agencies. As noted with some specificity under the discussions for each of the GA Responsibility Areas, evaluations should emphasize outcomes and not only outputs.
- Specific financing plans for each of the GA Responsibility Areas requested by the guaranty agency or team of guaranty agencies.
- How the proposal will create efficiencies in performing the activities of the GA Responsibility Area or Areas assumed by the guaranty agency or the team of guaranty agencies.
- An explanation of the likely impact the proposed VFA may have on the continued financial and operational viability of the guaranty agency.
- Any limitations on the expansion of the activities of the GA Responsibility Area beyond the existing portfolio and/or service area of the guaranty agency, including any timing constraints to such an expansion.
- How each guaranty agency will comply with FISMA.

Availability of Proposals

VFA proposals will generally be considered public documents and will be available to members of the public and to other guaranty agencies. However, the Secretary intends to exempt pricing and financing information included in the proposal from disclosure as confidential business information.

Selection

After reviewing and evaluating each VFA proposal received in response to this notice, the Secretary will decide whether to begin discussions with the guaranty agency or team of guaranty agencies that submitted the proposal to develop the VFAs. These discussions will address issues such as:

- The financing plan for the activities to be assumed by the guaranty agency or team of guaranty agencies.
- The budgets, allocation methods, and financing mechanisms (including performance-based financing mechanisms) that will be used to reimburse the guaranty agency for the activities it has assumed.
- Required reporting, including audit requirements.
- The standards by which each guaranty agency's performance of its responsibilities under the VFA will be assessed.
- The circumstances under which the VFA may be terminated by the Secretary.
- Other provisions that the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purpose of the Federal student aid programs.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: May 25, 2011.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2011–13339 Filed 5–27–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974, as Amended; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Office of Management and Budget (OMB) *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988,* 54 FR 25818 (June 19, 1989), and OMB Circular A–130, Appendix I, notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED) (the recipient agency) and the U.S. Department of Veterans Affairs (VA) (the source agency). After the ED and VA Data Integrity Boards approve a new computer matching agreement (CMA), the computer matching program will begin on the effective date as specified in the CMA and as indicated in paragraph 5 of this notice.

In accordance with the Privacy Act and applicable OMB guidance, the following information is provided:

1. Names of Participating Agencies

The U.S. Department of Education (ED) and the U.S. Department of Veterans Affairs (VA).

2. Purpose of the Match

The purpose of this matching program between ED and VA is to verify the veteran's status of applicants for financial assistance under Title IV of the Higher Education Act of 1965, as amended, (HEA), who claim to be veterans.

The Secretary of Education is authorized by the HEA to administer the Title IV programs and to enforce the terms and conditions of the HEA.

Section 480(c)(1) of the HEA defines the term "veteran" to mean "any individual who (A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a

condition other than dishonorable." (20 U.S.C. 1087vv(c)(1)). Under section 480(d)(1)(D) of the HEA, an applicant who is a veteran (as defined in section 480(c)(1)) is considered an independent student for purposes of Title IV, HEA program assistance eligibility, and therefore does not have to provide parental income and asset information to apply for Title IV, HEA program assistance. (20 U.S.C. 1087vv(d)(1)(D)).

3. Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under sections 480(c)(1) and 480(d)(1)(D) of the HEA (20 U.S.C. 1087vv(c)(1) and (d)(1)(D)). VA is authorized to participate in the matching program under 38 U.S.C. 523.

4. Categories of Records and Individuals Covered by the Match

ED will provide the Social Security number and other identifying information of each applicant who indicates veteran status. This information will be disclosed from the Federal Student Aid Application File system of records (18–11–01), which was most recently published in the **Federal Register** on December 29, 2009 (74 FR 68802–68808). ED will disclose this information to VA under routine use No. 14. ED data will be matched against data in the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA21) system of records, under routine use No. 21, as added to that system of records by a notice published in the **Federal Register** on June 4, 2001 (66 FR 30049–50).

5. Effective Dates of the Matching Program

The matching program will be effective on the last of the following dates: (1) June 24, 2011, the day after the expiration of the current computer matching agreement; (2) 30 days after notice of the matching program described in the CMA has been published in the **Federal Register**; or (3) 40 days after a report concerning the matching program has been transmitted to OMB and transmitted to Congress along with a copy of the CMA, unless OMB waives 10 days of this 40-day period for compelling reasons shown, in which case 30 days after transmission of the report to OMB and Congress. The matching program will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the CMA between ED and VA, should contact Mr. Leroy Everett, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3265. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.,* braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to the Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 25, 2011.

James Manning,

Chief of Staff, Federal Student Aid.

[FR Doc. 2011–13414 Filed 5–26–11; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Natural Gas Subcommittee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB) Natural Gas Subcommittee. SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES:

Wednesday, June 1, 2011
10 a.m.–12 p.m.
1:30 p.m.–4 p.m.
Thursday, June 2, 2011
10 a.m.–12 p.m.
1 p.m.–4 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Renee Stone, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *e-mail to: shalegas@hq.doe.gov* or at the following Web site: *http://www.shalegas.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SEAB was reestablished to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues and other activities as directed by the Secretary. The Natural Gas Subcommittee was established to provide advice and recommendations to the Full Board on how to improve the safety and environmental performance of natural gas hydraulic fracturing from shale formations, thereby harnessing a vital domestic energy resource while ensuring the safety of citizen's drinking water and the health of the environment. President Obama directed Secretary Chu to convene this group as part of the President's "*Blueprint for a Secure Energy Future*"—a comprehensive plan to reduce America's oil dependence, save consumers money, and to make our country the leader in clean energy industries.

Purpose of the Meeting: The purpose of this meeting is to allow Subcommittee members to hear directly from natural gas stakeholders.

Tentative Agenda: The meeting will start at 10 a.m. on June 1, 2011. The tentative meeting agenda includes presentations from industry representative and environmental groups. From approximately 10 a.m. to 12 p.m., the Subcommittee will hear presentations from industry representatives. From 1:30 p.m. to 3:30

p.m., the Subcommittee will hear presentations from the environmental community. The second day of the meeting, June 2, 2011, will begin at 10 a.m. The tentative meeting agenda includes presentations from States from 10 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m. The meeting will conclude at 4 p.m. both days.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to no later than 5 p.m. on Monday, May 30, 2011, by *e-mail to: shalegas@hq.doe.gov.* An early confirmation of attendance will help facilitate access to the building more quickly. Please provide your name, organization, citizenship and contact information. Space is limited. Anyone attending the meeting will be required to present government issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Wednesday, June 1, 2011 and Thursday, June 2, 2011. Approximately 30 minutes will be reserved each day for public comments. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 9:30 a.m. on June 1, 2011.

Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Renee Stone, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, by *e-mail to: shalegas@hq.doe.gov.*

This notice is being published less than 15 days prior to the meeting date due to programmatic issues and members' availability.

Issued at Washington, DC on May 23, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–13298 Filed 5–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, June 17, 2011, 1 p.m. to 3 p.m. EDT.

ADDRESSES: Participants may contact Ms. Joanne Corcoran by email at *joanne.corcoran@science.doe.gov* or by phone (301) 903–6488 to receive a call-in number by June 15, 2011. Public participation is welcomed; however, the number of teleconference lines is limited and available on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. E-mail: *david.thomassen@science.doe.gov* or phone (301) 903–9817. The most current information concerning this meeting can be found on the Committee's Web site: *http://www.science.doe.gov/ober/berac/announce.html.*

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice on a continuing basis to the Director, Office of Science, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topic:

- Discussion of existing policies and practices for disseminating research results in the fields relevant to the Biological and Environmental Research program.

Public Participation: The teleconference meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding the item on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://www.science.doe.gov/ober/berac/Minutes.html.*

Issued at Washington, DC, on May 25, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–13510 Filed 5–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 23, 2011, 8:30 a.m.–5 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Kristen G. Ellis, Designated Federal Officer, EMAB (EM–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–5810; fax (202) 586–0293 or e-mail: *kristen.ellis@em.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics:

- EM Program Update
- Budget Update
- EM Management Excellence
- EMAB Tank Waste Subcommittee Report update
- EMAB Acquisition and Project Management Subcommittee Report update

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to

Kristen G. Ellis no later than 5 p.m. on Thursday, June 16, 2011, at *kristen.ellis@em.doe.gov.* An early confirmation of attendance will help facilitate access to the building more quickly. Please provide your name, organization, citizenship and contact information. Space is limited. Entry to the DOE Forrestal building will be restricted to those who have confirmed their attendance in advance. Anyone attending the meeting will be required to present government issued photo identification, such as a passport, driver's license, or government identification. EMAB 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 Kristen G. Ellis at least seven days in advance of the meeting at the phone number or e-mail address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Kristen G. Ellis at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Time allotted for individuals wishing to make public comments will depend on the number of individuals who wish to speak, but will not exceed five minutes.

Minutes: Minutes will be available by writing or calling Kristen G. Ellis at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/emabmeetings.aspx.*

Issued at Washington, DC, on May 25, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–13511 Filed 5–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–725B–001]

Commission Information Collection Activities (FERC–725B); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission published a Notice in the **Federal Register** (75 FR 65618, 10/26/2010) requesting public comments. In addition, FERC published a notice in the **Federal Register** (76 FR 19333, 4/7/2011) indicating submission to OMB of the information collection described below and that it had not received any comments regarding the collection of information thus far. Subsequently, FERC staff became aware of a comment from the Transmission Agency of Northern California (TANC) that had been submitted in a timely manner but internally was indexed incorrectly. On May 3, 2011 the Commission issued a notice extending the comment period [1] (on the notice published April 7, 2011) to June 23, 2011. The Commission is revising its submission to OMB to reflect receipt of the comment.

DATES: Comments on the collection of information are due by June 30, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0248 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed either on paper or on CD/DVD, and should refer to Docket No. IC11–725B–001. 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 and eSubscription are not available for Docket No. IC11–725B–001, due to a system issue.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected by the FERC–725B, Reliability Standards for Critical Infrastructure Protection (OMB Control No. 1902–0248), is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). On January 18, 2008, the Commission issued Order No. 706, approving eight Critical Infrastructure Protection Reliability Standards (CIP Standards) submitted by the North American Electric Reliability Corporation (NERC) for Commission approval.[2]

The CIP Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets.[3] These standards help protect the nation's Bulk-Power System against potential disruptions from cyber attacks.[4] The CIP Standards include one actual reporting requirement and several recordkeeping requirements. Specifically, CIP–008–1 requires responsible entities to report cyber security incidents to the Electricity Sector-Information Sharing and Analysis Center (ES–ISAC). In addition, the eight CIP Standards

[1] The previous comment period ending on June 23rd will be extended to the date 30 days after publication of this revised notice in the **Federal Register** as stated in the **DATES** section of this notice.

[2] CIP–002–1, CIP–003–1, CIP–004–1, CIP–005–1, CIP–006–1, CIP–007–1, CIP–008–1, and CIP–009–1.

[3] In addition, in accordance with section 215(d)(5) of the FPA, the Commission proposed to direct NERC to develop modifications to the CIP Reliability Standards to address specific concerns identified by the Commission.

[4] For a description of the CIP Standards, see the Critical Infrastructure Protection Section on NERC's Web site at *http://www.nerc.com/page.php?cid=2\20.*

require responsible entities to develop various policies, plans, programs, and procedures.[5]

The CIP Standards do not require a responsible entity to report to the Commission, ERO or Regional Entities, the various policies, plans, programs and procedures. However, a showing of the documented policies, plans, programs and procedures is required to demonstrate compliance with the CIP Standards.

Public Comment and FERC Response: TANC stated that they believed that the Commission did not adequately address or articulate the burden that falls on companies in complying with the CIP Standards and in particular, the hourly and cost burdens to comply with the documentation required by the CIP Standards. In looking at the commenter's submittal, FERC has decided to examine more carefully the burden calculations. Relying on OMB guidance in interpreting the requirements of the Paperwork Reduction Act of 1995, FERC has determined that its initial estimate of cost burden was indeed lower than is reasonable for the average respondent.

FERC maintains that the universe of respondents breaks down into three main categories: (1) Entities that have identified Critical Cyber Assets and have undergone a previous audit; (2) Entities that have not identified Critical Cyber Assets but must show compliance with CIP–003 R1 and CIP–002 R1 through R3; and (3) New entities that have come into compliance with the CIP Standards and undergoing their first compliance audit. FERC's revised burden analysis is based on the average amount of time expended annually to obtain or maintain the information necessary in the event of a compliance audit. The fact that the average company may experience a spike in the burden hours immediately proceeding and during a compliance audit is accounted for in the revised estimate.

The differences between the first and third categories of respondents is that, as an entity goes through multiple compliance audits, their processes become streamlined and more automated, which then becomes reflected in a lessening of their burden. Other areas that cause the burden numbers to fluctuate deal with the size of the company, the number of overall electric assets they have, the number of critical assets and critical cyber assets that they identify, etc. Therefore, the total numbers currently used by FERC to calculate cost burden are considered the case for an average-sized company with an average number of Critical Assets and Critical Cyber Assets. It is expected that the actual burden experienced by respondents may be higher or lower than the Commission estimate, based on factors listed above.

Based on observations over several audit cycles, FERC now thinks that the preparation of the audit paperwork for an entity undergoing their first compliance audit (respondent category 3) is approximately 3,840 hours. This represents 20 technical personnel working 50% of their time over 8 weeks gathering and compiling all of the required paperwork to show compliance. In addition, a secondary period that is 20% of the primary effort is estimated to be needed to respond and gather information generated from questions arising from the initial submission.

Based on observations over several audit cycles, FERC now thinks that the burden associated with ongoing compliance and preparation for future audits (respondent category 1) is less than entities coming into compliance for the first time (respondent category 3) as they are familiar with the audit compliance process and presumably will have streamlined their processes to handle the data collection effort. FERC estimates this should result in a reduction of 50% of their effort. This would result in a burden of approximately 1,920 hours.

Finally, for those entities that have not identified Critical Cyber Assets but must still show compliance with CIP–003 R1 and CIP–002 R1 through R3 (respondent category 2), FERC agrees with TANC and now estimates that these entities must expend approximately 120 hours or the equivalent of 3 employees working 50% of their time for 2 weeks. FERC believes this is a reasonable estimate as the majority of these entities are small and therefore have fewer electrical assets to examine in order to determine if they have any Critical Assets, which is the first stage of the CIP–002 process.

FERC has also reconsidered dividing the burden hours by three to reflect the NERC audit schedule of 3–5 years and is instead not dividing the burden hours at all. This is due to the fact that a company will have to be obtaining and maintaining the information necessary for an audit on a consistent basis, and not only during an audit that occurs every 3–5 years. Therefore, the revised burden hours presented here represent the average annual burden hours per respondent, including the spikes that may result during an audit.

Action: The Commission is requesting a three-year extension of the existing collection with no changes to the requirements.

Burden Statement: The revised estimated annual burden is shown below in accordance with the discussion above. The Commission has developed estimates using data from NERC's compliance registry as well as a 2009 survey that was conducted by NERC to assess the number of entities reporting Critical Cyber Assets.

Data collection	Number of respondents[6] (1)	Average number of responses per respondent (2)	Average number of burden hours per response[7] (3)	Total annual hours (1) × (2) × (3)
FERC–725B:				
Category 1—Estimate of U.S. Entities that have identified Critical Cyber Assets.	345	1	1,920	662,400
Category 2—Estimate of U.S. Entities that have not identified Critical Cyber Assets.	1,156	1	120	138,720
Category 3—New U.S. Entities that have to come into compliance with the CIP Standards[8].	6	1	3,840	23,040

[5] The October notice issued in this docket contains more information on the reporting requirements and can be found at *http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13857625.* The full text of the standards can be found on NERC's Web site at *http://www.nerc.com/page.php?cid=2\20.*

Data collection	Number of respondents [6] (1)	Average number of responses per respondent (2)	Average number of burden hours per response [7] (3)	Total annual hours (1) × (2) × (3)
Entities no longer required to comply with CIP Standards (Two category 1 respondents and four category 2 respondents).	Category 1: −2	1	Category 1 (2 respondents): 1,920.	−3,840
	Category 2: −4		Category 2 (4 respondents): 120.	−480
Totals	1,501			819,840

The total estimated annual cost burden to respondents is:

- Category 1, Entities that have identified Critical Assets = 658,560 (662,400 − 3,840) hours @ $96 = $63,221,760
- Category 2, Entities that have not identified Critical Assets = 138,240 (138,720 − 480) hours @ $96 = $13,271,040
- Category 3, New U.S. Entities that have to comply with CIP Standards = 23,040 hours @ $96 = $2,211,840
- Storage Costs for Entities that have identified Critical Assets [9] = 345 Entities @ $15.25 = $5,261
- Total Cost for the FERC–725B = $78,709,901

The hourly rate of $96 is the average cost of legal services ($230 per hour), technical employees ($40 per hour) and administrative support ($18 per hour), based on hourly rates from the Bureau of Labor Statistics (BLS) and the 2009 Billing Rates and Practices Survey Report.[10] The $15.25 rate for storage costs for each entity is an estimate based on the average costs to service and store 1 GB of data to demonstrate compliance with the CIP Standards.[11]

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.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Dated: May 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13475 Filed 5–27–11; 8:45 am]

BILLING CODE 6717–01–P

[6] The NERC Compliance Registry as of 9/28/2010 indicated that 2079 entities were registered for NERC's compliance program. Of these, 2057 were identified as being U.S. entities. Staff concluded that of the 2057 U.S. entities, only 1501 were registered for at least one CIP-related function. According to an April 7, 2009, memo to industry, NERC's VP and Chief Security Officer noted that only 31% of entities responded to an earlier survey and reported that they had at least one Critical Asset, and only 23% reported having a Critical Cyber Asset. Staff applied the 23% reporting to the 1501 figure to obtain an estimate. The 6 new entities listed here are assumed to match a similar set of 6 entities that would drop out in an existing year. Thus, the net estimate of respondents remains at 1501 per year.

[7] Calculations:

Respondent category 3:

20 employees × (working 50%) × (40 hrs/week) × (8 weeks) = 3200 hours

20 employees × (working 20%) × (3200 hrs) = 640 hours

Total = 3840

Respondent category 2:

3 employees × (working 50%) × (40 hrs/week) × (2 weeks) = 120 hours

Respondent category 1:

50% of 3840 hours = 1920

[8] These respondents and those in the subsequent column of the table (with the corresponding burden and cost figures) were not included in the 60-day public notice due to an oversight by Commission staff.

[9] This cost category was not included in the 60-day public notice due to an oversight by Commission staff.

[10] Bureau of Labor Statistics figures were obtained from *http://www.bls.gov/oes/current/naics2_22.htm*, and 2009 Billing Rates figures were obtained from *http://www.marylandlawyerblog.com/2009/07/average_hourly_rate_for_lawyer.html.* Legal services were based on the national average billing rate (contracting out) from the above report and BLS hourly earnings (in-house personnel). It is assumed that 25% of respondents have in-house legal personnel.

[11] Based on the aggregate cost of an IBM advanced data protection server.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2277–023]

Union Electric Company (dba Ameren Missouri); Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2277–023.

c. *Date filed:* June 24, 2008.

d. *Applicant:* Union Electric Company (dba Ameren Missouri).

e. *Name of Project:* Taum Sauk Pumped Storage Project.

f. *Location:* On the East Fork of the Black River, in Reynolds County, Missouri. The project occupies no Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael O. Lobbig, P.E., Managing Supervisor, Hydro Licensing, Ameren Missouri, 3700 S. Lindbergh Blvd., St. Louis, MO 63127; telephone 314–957–3427; e-mail at *mlobbig@ameren.com.*

i. *FERC Contact:* Janet Hutzel, telephone (202) 502–8675, or by e-mail at *janet.hutzel@ferc.gov.*

j. *Deadline for filing scoping comments:* July 23, 2011.

All documents may be filed electronically via the Internet. See 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The existing Taum Sauk Pumped Storage Project consists of: (1) A lower reservoir impounded by a concrete gravity dam downstream of the confluence of the East Fork Black River and Taum Sauk Creek; (2) an upper reservoir on the top of Proffit Mountain impounded by a rebuilt roller-compacted concrete dam; (3) vertical shaft, rock and concrete-lined tunnel sections, and a penstock conduit; (4) a pump-generating plant with two reversible pump units and two motor generators with a total installed capacity of 408 megawatts; (5) an excavated tailrace and open channel to the lower reservoir; (6) a 138-kilovolt switchyard/substation; (7) a gravel and sedimentation trap (bin wall) on the East Fork of the Black River; and (8) associated ancillary equipment.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process

The Commission intends to prepare an environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

Commission staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date and Time: Thursday, June 23, 2011, at 9 a.m. (CDT).
Location: LaCharette Conference Room, Lewis and Clark State Office Building, 1101 Riverside Drive, Jefferson City, MO.

Public Scoping Meeting

Date and Time: Wednesday, June 22, 2011 at 6 p.m. (CDT).
Location: Lesterville R–IV School, Cafeteria, 33415 Hwy. 21, Lesterville, MO.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above).

Environmental Site Review

Ameren Missouri and Commission staff will conduct a project environmental site review on Wednesday, June 22, 2011, at 8 a.m. CDT. All interested individuals, organizations, and agencies are invited to attend. All participants will be required to sign their name and show a government-issued, photo I.D. Participants must wear hard-soled shoes; no sandals or open-toed shoes are allowed. Smoking will not be allowed on the site review, and firearms, knives, or weapons of any kind are not permitted on Ameren Missouri property. Please arrive 15 minutes early to allow time for visitor badging at the main security gate. All participants must contact Mr. Michael Lobbig of Ameren Missouri at (314) 957–3427 or by e-mail at *mlobbig@ameren.com,* by June 9, 2011, to attend the environmental site review.

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Dated: May 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13316 Filed 5–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–485–000]

Distrigas of Massachusetts LLC; Notice of Application

Take notice that on May 18, 2011, Distrigas of Massachusetts LLC (DOMAC), 20 City Square, Suite 3, Charlestown, MA 02129, filed in Docket No. CP11–485–000, an application, pursuant to section 3 of the Natural Gas Act (NGA), as amended, and Parts 153 and 380 of the Commission's Regulations, for authority to construct, install and operate a heating value and

Wobbe Index reduction (HVWIR) system at DOMAC's liquefied natural gas (LNG) terminal in Everett, Massachusetts, (HVWIR Project), all as more fully set forth in the application, which is on file with the Commission and open to public inspection. Specifically, DOMAC proposes to alter the means by which it adjusts the heating value and Wobbe Index of the regasified LNG it delivers to interconnecting pipelines and is requesting authority to replace its limited air injection system with a liquid nitrogen system for all of its regasified LNG send-out. DOMAC asserts the HVWIR Project will enable DOMAC to maintain the flexibility to receive cargos to meet customer demand, to ensure delivery reliability, and to comply with the specifications of the FERC tariffs of interconnecting pipelines. DOMAC proposes to commence operation of the HVWIR system by October 1, 2012.

Any questions concerning this application may be directed to Carol Churchill, Manager, Communications, Distrigas of Massachusetts, LLC, 20 City Square, Suite 3, Charlestown, MA 02129, at (617) 886–8759 or e-mail at *carol.churchhill@gdfsuezna.com;* or Marc A. Silver, General Counsel, Distrigas of Massachusetts LLC, 20 City Square, Suite 3, Charlestown, MA 02129, at (617) 886–8763 or e-mail at *marc.silver@gdfsuezna.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of the Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of issuance of the Commission staff's FEIS to EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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: June 15, 2011.

Dated: May 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13476 Filed 5–27–11; 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: EC11–62–000.

Applicants: Evergreen Wind Power III, LLC, Evergreen Gen Lead, LLC.

Description: Supplemental Letter of Evergreen Wind Power III, LLC, and Evergreen Gen Lead.

Filed Date: 05/24/2011.

Accession Number: 20110524–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 7, 2011.

Take notice that the Commission received the following electric rate filings:

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: Response of NextEra Nuclear Affiliates to the Data Request of Commission Staff.

Filed Date: 05/20/2011.

Accession Number: 20110520–5169.

Comment Date: 5 p.m. Eastern Time on Friday, June 10, 2011.

Docket Numbers: ER11–3192–001.

Applicants: The Dayton Power and Light Company.

Description: The Dayton Power and Light Company submits tariff filing per 35.37: FERC Electric Tariff, Volume No. 10 to be effective 3/26/2011.

Filed Date: 05/24/2011.

Accession Number: 20110524–5101.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3193–001.
Applicants: The Dayton Power and Light Company.
Description: The Dayton Power and Light Company submits tariff filing per 35.37: FERC Electric Tariff, Volume No. 6 to be effective 3/26/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5105.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3194–001.
Applicants: DPL Energy, LLC.
Description: DPL Energy, LLC. submits tariff filing per 35.37: FERC Rate Schedule No. 1 to be effective 3/26/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5108.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3384–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Amendment to Compliance Filing submitted in EL08–47–006 re-Docketed as ER11–3384 to be effective 4/16/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5126.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3630–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): OVEC KK–1 Agreement to be effective 6/1/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5095.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3631–000.
Applicants: Interstate Power and Light Company.
Description: Interstate Power and Light Company submits tariff filing per 35: IPL RES–5 Baseline Tariff Compliance Filing to be effective 8/26/2010.
Filed Date: 05/24/2011.
Accession Number: 20110524–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3632–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): CEP Funding Long Term Conditional Firm PTP to be effective 12/1/2013.
Filed Date: 05/24/2011.
Accession Number: 20110524–5123.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3633–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii) 2011–05–24 Amended and Restated UDCOA between CAISO and Banning, to be effective 7/24/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5128.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3634–000.
Applicants: KES Kingsburg, L.P.
Description: KES Kingsburg, L.P. submits tariff filing per 35.12: Baseline New to be effective 8/1/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5127.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–24–000.
Applicants: Upper Peninsula Power Company.
Description: Amendment to Upper Peninsula Power Company's Application for Renewed Authorization to Issue Short-term Debt.
Filed Date: 05/24/2011.
Accession Number: 20110524–5144.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13468 Filed 5–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who

make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. Docket No. ER04–449–018 ER04–499–019.	5–19–11	[1] Connie Caldwell
Exempt:		
1. CP10–477–000	5–10–11	[2] Gertrude F. Johnson
2. CP10–477–000	5–11–11	[3] Gertrude F. Johnson
3. CP11–46–000	5–3–11	[4] Kenneth Warn
4. CP11–46–000	5–12–11	[5] Kenneth Warn
5. ER10–1791–000	5–9–11	Hon. Rick Snyder

[1] Memorandum to File Attaching Informational Filing.
[2] Record of e-mail correspondence.
[3] Telephone record.
[4] Record of phone conference call.
[5] Record of phone conference call.

Dated: May 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13317 Filed 5–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–486–000]

Gulf LNG Pipeline, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 18, 2011, Gulf LNG Pipeline, LLC (GLNG Pipeline), Colonial Brookwood Center, 569 Brookwood Village, Birmingham, Alabama 35209, filed in Docket No. CP11–486–000 an application, pursuant to sections 157.205, 157.208, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA), as amended, for authority to construct, own, and operate 120 feet of 24-inch diameter pipeline and certain check measurement equipment for an interconnection with Transcontinental Gas Pipe Line, LLC (Transco) and Florida Gas Transmission Company (FGT) located in Jackson County, Mississippi, under GLNG Pipeline's blanket certificate issued in Docket No. CP06–14–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

GLNG Pipeline proposes to install approximately 120 feet of 24-inch diameter pipeline and certain check measurement equipment for a new interconnection with Transco and FGT located at the terminus of the Pascagoula Expansion Project in Moss Point, Jackson County, Mississippi. GLNG Pipeline states that the interconnection would allow GLNG Pipeline to deliver and Transco and FGT to receive up to 810,000 dekatherms per day of firm transportation service. GLNG further states that there would be no change in GLNG Pipeline's daily design capacity or daily operating pressure as a result of constructing the proposed facilities. Finally, GLNG Pipeline states that it would spend approximately $245,000 to construct the proposed interconnection facilities.

Any questions concerning this application may be directed to Margaret G. Coffman, Counsel, Gulf LNG Pipeline Company, LLC, Colonial Brookwood Center, 569 Brookwood Village, Birmingham, Alabama 35209, or via telephone at (205) 325–7424 or e-mail at *meghan.coffman@elpaso.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

[1] 118 FERC ¶ 61,128 (2007).

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Dated: May 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13473 Filed 5–27–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–0119; FRL–9313–2]

Draft National Coastal Condition Report IV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: This Notice invites public comment on the draft National Coastal Condition Report IV (NCCR IV), which describes the condition of the Nation's coastal waters. Clean coastal waters provide environmental, public health, recreational, and economic value; however, these waters are vulnerable to pollution and other stressors from a variety of sources. According to the draft NCCR IV, the overall condition of the Nation's coastal waters continues to be fair, with marginal improvement from EPA's 2008 National Coastal Condition Report III. EPA expects that this Report on the condition of coastal waters will increase public awareness about the extent and seriousness of pollution in these waters and will support more informed decisions concerning protection of this resource.

DATES: Comments must be received on or before August 1, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–EPA–HQ–OW–2007–0019], by one of the following methods:

Email: *ow-docket@epa.gov*,

Mail: Water Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Room 3334, Washington, DC 20460,

Hand Delivery: Water Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–EPA–HQ–OW–2007–0019. 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.*

The *http://www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Gregory Colianni, Ocean and Coastal Protection Division, Office of Water, 4504T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number: 202–566–1249; fax number: 202–566–1336; email address: *Colianni.Gregory@epa.gov* or Virginia Engle, Gulf Ecology Division, Office of Research and Development, Environmental Protection Agency, 1 Sabine Island Drive, Gulf Breeze, Florida 32561; telephone number: (850) 934–9354; fax number: (850) 934–9201; email address: *Engle.Virginia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This report is designed to help us better understand the condition of the nation's coastal waters, whether that condition is getting better or worse, and how different regions compare. This report, however, cannot represent all individual coastal and estuarine systems of the U.S. and is based on a limited number of ecological indices and component indicators for which nationally consistent data sets are available to support estimates of ecological condition. The assessments provided in this report, and more importantly, the underlying data used to develop the assessments, provides a picture of historical coastal conditions at state, regional, and national scales. For example, the National Coastal Assessment (NCA) data have been used to provide insight into the conditions in the estuaries of Louisiana and Mississippi prior to Hurricane Katrina. These data may also be used, along with data and studies by others, to help us understand conditions in Gulf of Mexico estuaries prior to the Deepwater Horizon incident and subsequent BP oil spill. However, the methodology and data used in this report were not designed to assess all impacts related to oil spills as an ecological stressor. This report does not include, for example, indicators for all oil-related contaminants such as oil itself, grease, alkylated PAHs, or volatile organic compounds, dispersant compounds, or other indicators of oil spill-related

exposure that might be required in a comprehensive environmental assessment. Any comparisons to environmental data collected to assess the impact of the BP oil spill on Gulf of Mexico estuaries should be limited to the indicators and methods presented in this report, and to broad generalizations about coastal conditions at state, regional or national scales.

Nevertheless, in light of the 2010 BP oil spill in the Gulf of Mexico, EPA recognizes that some may wish to use the 2003–2006 data presented in the draft NCCR IV as a basis for comparison of ecological conditions in Gulf of Mexico coastal waters following the oil spill. EPA seeks comments from the scientific community on the utility and limitations of the information presented in the draft NCCR IV for this type of impact analysis.

The National Coastal Condition Reports represent collaboration among EPA (Office of Water (OW) and Office of Research and Development (ORD)), the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Services (USFWS), and coastal state agencies. The first National Coastal Condition Report published in 2001 in partnership with NOAA, USFWS, U.S. Geological Survey (USGS), and U.S. Department of Agriculture (USDA) included some data from about 70% of the U.S. coastal waters. Based upon available data from 1990–1996, the Report concluded that the Nation's coastal waters were in fair condition. The second National Coastal Condition Report, released in 2005, included some data from all of the Nation's coastal waters in the conterminous 48 states and Puerto Rico, and concluded that these waters continued to be in fair condition. The third National Coastal Condition Report, released in 2008, built upon the previous reports and provided assessments based on data collected from 2001 to 2003. The third Report similarly concluded that the overall condition of the Nation's coastal waters was fair. According to the draft NCCR IV, the overall condition of the Nation's coastal waters continues to be fair, with marginal improvement from EPA's 2008 National Coastal Condition Report III.

With each successive report the geographic scope of NCA coverage has expanded. This fourth edition of the NCCR includes for the first time an assessment of estuarine condition in American Samoa, Guam, and the U.S. Virgin Islands along with updated assessment of coastal waters of the conterminous U.S., Alaska, Hawaii, and Puerto Rico. The NCCR IV data were collected from 3,144 sites from 2003 through 2006. This Report serves as a useful tool for analyzing the progress of coastal programs implemented since the first Report and as a "benchmark" for future comparisons and therefore allows for the analysis of trends in condition over time.

The information presented in the NCCR IV is more streamlined than the NCCR III, with a greater focus on NCA indicators rather than highlights of other coastal programs. In addition to expanded NCA geographic coverage, the NCCR IV also includes several new sections: Summaries of offshore ocean condition for three areas (Mid-Atlantic Bight, South Atlantic Bight, and the West Coast) and comparisons of these waters with near-shore condition, trends in regional beach closures, a Great Lakes fisheries section, and a chapter on emerging coastal issues.

The Draft National Coastal Condition Report IV is also undergoing an external peer review led by EPA's Office of Research and Development. The peer review plan, including the peer review charge questions, is available upon request by contacting Virginia Houk at: *Houk.Virginia@epa.gov*.

The draft document can be found on the Web at:

http://nccr4.rti.org/

Username = nccr4

Password = Coastal10!

Dated: May 20, 2011.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2011–13400 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9313–6]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board usually meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. Section 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the states of Arizona, California, New Mexico and Texas; and Tribal and private organizations with experience in environmental and infrastructure issues along the U.S.-Mexico border.

The purpose of the meeting is to discuss the Board's 14th report, which will focus on the environmental and economic benefits of renewable energy development in the border region. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Thursday, June 16, from 8:30 a.m. (registration at 8 a.m.) to 6 p.m. The following day, June 17, the Board will meet from 8 a.m. until 2 p.m.

ADDRESSES: The meeting will be held at the US Grant Hotel, 326 Broadway, San Diego, CA 92101, phone number: 619/232–3121. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* 202–564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–564–2130 or by e-mail at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 23, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–13406 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0436; FRL–9313–4]

EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population (Blue Book)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the availability of U.S. Environmental Protection Agency's (EPA) updated EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population (EPA 402–R–11–001, April 2011), also known as the *Blue Book,* which provides radiation risk assessment methodology. EPA will use the scientific information on radiation risks provided in the *Blue Book,* together with information from other sources, when considering potential modifications and updates to radiation protection rules and guidance.

FOR FURTHER INFORMATION CONTACT: David Pawel, Radiation Protection Division (6608J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone number: 202–343–9202; fax number: 202–343–2302; e-mail address: *pawel.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can i get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0436; FRL–9313–4]. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.*

II. Background

The U.S. Environmental Protection Agency develops estimates of risk from low-level ionizing radiation as part of its responsibilities for regulating environmental exposures and in its role of providing Federal Guidance on radiation protection.

The *EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population,* also known as the *Blue Book,* is a revision to EPA's methodology for estimating radiogenic cancer risks. These updates are based on the National Research Council's latest report on *Biological Effects of Ionizing Radiation* (BEIR VII) as well as other updated science.

The *Blue Book* uses the best science available to calculate cancer risk estimates separately by age at exposure, sex, and potentially affected organ. More specifically, the *Blue Book* presents new EPA estimates of cancer incidence and mortality risk coefficients pertaining to low dose exposures to ionizing radiation for the U.S. population, as well as their scientific basis. (Risk here refers to the probability of a health effect, *i.e.,* a cancer or a cancer death; a risk coefficient refers to the risk per unit dose of ionizing radiation.)

The *Blue Book* has undergone an extensive peer review process. It takes into account recommendations made by the Agency's Science Advisory Board (SAB), which completed its review in January 2010. For the *Blue Book* review, the SAB relied on advice from its Radiation Advisory Committee—a panel of non-EPA scientists, who are chosen for their objectivity, integrity, and expertise in radiation science and protection.

As in BEIR VII, models in the *Blue Book* are provided which describe how radiogenic cancer risks depend on such factors as: (1) When a person is exposed, (2) at what age a person might get cancer, (3) sex, (4) and the type of cancer. Estimates of cancer risk are based on these models. However, a number of extensions and modifications to the BEIR VII models have been implemented. Most notably, the Blue Book provides: (1) Risk estimates for α-particles which were not addressed in BEIR VII; (2) risk estimates for some types of cancer that were not considered in BEIR VII: basal cell carcinomas, kidney cancer, bone sarcomas, and also cancers from prenatal exposures, and (3) a more thorough analysis of uncertainties associated with the radiogenic risk estimates.

Underlying the risk models is a large body of epidemiological and radiobiological data. In general, results from both lines of research are consistent with a linear, no-threshold dose (LNT) response model in which the risk of inducing a cancer in an irradiated tissue by low doses of radiation is proportional to the dose to that tissue. The BEIR VII Committee unequivocally recommended continuing adherence to the LNT approach. EPA also finds strong scientific support for LNT, while acknowledging that new research might conceivably lead to revisions in the future.

The most important source of data on radiogenic health effects is a long-term epidemiological study of Japanese atomic bomb survivors, who received an essentially instantaneously delivered dose of radiation, mostly in the form of γ-rays. This study has important strengths, including: An exposure which can be pinpointed in time; a large, relatively healthy exposed population encompassing both genders and all ages; a wide range of radiation doses to all organs of the body, which can be estimated reasonably accurately; and detailed epidemiological follow-up for about 50 years. The precision of the derived risk estimates is higher than all other studies for most cancer types. Nevertheless uncertainties in the risk estimates are often quite large for specific cancers, and the uncertainties are even larger if one focuses on a specific gender, age at exposure, or time after exposure. Calculating radiogenic risks is further complicated because radiogenic risks may be different for the U.S. population than for the Japanese A-bomb survivors. Such differences may be due to genetic or environmental factors, *e.g.,* radiogenic lung cancer risks likely depend on patterns of tobacco use.

In addition to the Japanese Life Span Study (LSS), other epidemiological studies provide important information about radiogenic cancer risks. These include studies of medically irradiated patients and groups receiving occupational or environmental exposures. For thyroid and breast cancers, risk estimates are based on data from both the A-bomb survivors and medically irradiated cohorts. While studies on populations exposed occupationally or environmentally have, so far, been of limited use in quantifying radiation risks, they can provide valuable insight into the risks from chronic exposures.

Summary risk coefficients are provided for the U.S. population, which can be used to calculate average risks for persons exposed throughout life to a

constant dose rate. The average lifetime dose from natural background radiation (not including radon) is about 75 mGy. Using the summary risk coefficients in the *Blue Book,* this corresponds to about 87 out of 10,000 people in the U.S. who would get cancer from natural background radiation, with 44 out of the 87 resulting in death. Radiogenic risks (per unit dose) are substantially larger for childhood than adult exposures, and tend to be larger for females than males. Risks per unit dose are larger for breast, lung and colon cancers than for most other cancer sites.

For both males and females, the estimated risk for cancer incidence (for all cancers combined) increased by about 35% from EPA's previous estimates published in Federal Guidance Report 13 (FGR–13). However, for some individual cancer sites, relative changes in cancer incidence are more than two-fold. In general, the new EPA mortality estimates do not differ greatly from those in FGR–13; remarkably, for all sites combined, the estimates for mortality changed by less than 2% for both males and females.

Aside from the case of radon (which is not in the scope of this report), human data on risks from α-particles are much more limited than for most other types of radiation. For most cancer types, results from laboratory experiments indicate that the risk per unit dose may be about 20 times greater for α-particles than for γ-rays. Thus, risk coefficients for α-particles (for most cancers) are derived by multiplying the corresponding risk coefficients for γ-rays by a factor of 20.

EPA will use the scientific information on radiation risks provided in the *Blue Book,* together with information from other sources, when considering potential modifications and updates to radiation protection rules and guidance. The complete *Blue Book, EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population* (EPA 402–R–11–001, April 2011), can be accessed at *http://epa.gov/radiation/assessment/blue-book/index.html.*

Dated: May 24, 2011.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2011–13395 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –9303–7]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Marathon, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City of Marathon, Florida for the purchase of nine submerged membrane units (SMUs), as part of an overall membrane bioreactor system (MBR), from Kubota Corporation in Japan. The submerged membrane unit is a specialty product for this project. The membrane bioreactor system for which this SMU will be used is an advanced wastewater treatment process, which is designed to meet the high quality effluent requirements of the waste load allocation, under the National Pollutant Discharge Elimination System (NPDES) permit. Additionally, the City of Marathon facility has specific technical design requirements for the installation of the SMUs with the membrane bioreactor treatment process, including tankage footprint, geometry, and configuration. Only the Kubota Corporation product meets all these requirements. The City stated that there are no apparent domestic manufactured submerged membrane units with the design specifications as required for this project. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being approved. Waivers for these types of products and components have already been published in the **Federal Register**, however, any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based on the review of the information provided, EPA has concluded that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendation of the EPA Region 4, Water Protection Division, Grants and Infrastructure Branch. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the City to purchase nine submerged membrane units manufactured by Kubota, for the proposed project being implemented by the City of Marathon, Florida.

DATES: *Effective Date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Cynthia Y. Edwards, Project Officer, Grants and SRF Section, Water Protection Division (WPD), (404) 562–9340, USEPA Region 4, 61 Forsyth St., SW., Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Sections 1605(a) of Public Law 111–5, Buy American requirements, to the City of Marathon, Florida, for the purchase of nine submerged membrane units, manufactured by Kubota of Japan.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The City has requested a waiver from the Buy American Provision for the purchase of nine submerged membrane units, a specialty product for this project. The membrane bioreactor system for which this SMU will be used is an advanced wastewater treatment process, which is designed to meet the high quality effluent requirements of the waste load allocation, under the NPDES permit. The Marathon Area 5 Waste Water Treatment Plant (WWTP) Upgrade Project is a retrofit of an existing WWTP that will allow it to meet additional flow demands generated by Area 5. There is no additional land available for the expansion of the WWTP. Therefore, it is necessary to use membrane technology to increase capacity without expanding

the project site. The membrane modules, as manufactured by Kubota of Japan, are specified for this technology. EPA has determined that the City's waiver request may be treated as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA has evaluated the City's request to determine if the request constitutes a late request. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the City's request, though made after the date that the contract was signed, can be evaluated as timely because the need for a waiver was not reasonably foreseeable. The Area 5 Wastewater Treatment Plant project initially began design in October of 2008, prior to ARRA funding. After the preliminary design was completed, it was determined that the plant site could not be extended as was previously planned. The design approach was changed from SBR technology to membrane technology due to the limited space available. It was discovered during final design in July of 2010 that similar membranes on the market would also need a waiver, as they were also manufactured outside of the United States. The project specifications, including performance criteria, certification criteria, and design criteria, require that the SMU be a Kubota EK–400 type unit that will be a part of a MBR system provided by Enviroquip/Ovivo.

EPA technical reviews for similar ARRA waiver requests found other manufacturers of submerged membrane filtration systems including Dynatec, Veolia/Kruger, GE Water Technologies, Norit, Pall, Siemens, Toray, and Koch. All manufacturers confirmed that their membrane units were obtained outside the U.S. The technical reviews did not find a membrane unit manufactured in the U.S. The City of Marathon considered Aqua-Aerobic and Zenon technologies, and found that these products are also made outside the U.S. EPA and the City's submissions clearly have provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications.

The April 28, 2009 EPA Headquarters Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the American Recovery and Reinvestment Act of 2009," defines "satisfactory quality" as "the quality of steel, iron or manufactured goods specified in the project plans and designs."

EPA's national contractor prepared a technical assessment report dated December 27, 2010 based on the submitted waiver request. The report stated that the waiver request submittal was complete, that adequate technical information was provided, and a waiver was supported by the available evidence. The purpose of the ARRA provisions is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA: To create or retain jobs.

The Region 4 Grants and Infrastructure Branch has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the criteria listed under ARRA Section 1605(b), OMB's regulation at 2 CFR 176.100, and the aforementioned EPA Headquarters Memorandum of April 28, 2009. ARRA Section 1605(b)(2) permits a waiver if "Iron, steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality." This waiver request meets this criterion and is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project, and that application of the Buy American requirements would be inconsistent with the public interest, the City of Marathon is hereby granted a waiver from the Buy American requirements. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, The City of Marathon, Florida is granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of nine submerged membrane units as specified in the City's request of December 3, 2010 with supplemental information provided on December 6, 2010. This supplemental information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection 9b." requirements of Section 1605(a) of Public Law 111–5.

Authority: Pub. L. 111–5, section 1605.

Dated: April 5, 2011.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 2011–13401 Filed 5–27–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that

does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 30, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://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 title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service-General Information, Section 76.1603, Customer Service-Rate and Service Changes and Section 76.1619, Information and Subscriber Bills.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 8,260 respondents; 1,117,540 responses.

Estimated Time per Response: 0.0167 to 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure

requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 50,090 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: The Commission released on October 14, 2010, a Third Report and Order and Order on Reconsideration, FCC 10–181, CS Docket 97–80 and PP Docket 00–67, modifying the Commission's rules to implement Section 629 of the Communications Act (Section 304 of the Telecommunications Act of 1996). Section 629 of the Communications Act directs the Commission to adopt rules to assure the commercial availability of "navigation devices," such as cable set-top boxes. One rule modification in the Third Report and Order and Order on Reconsideration is intended to prohibit price discrimination against retail devices. This modification requires cable operators to disclose annually the fees for rental of navigation devices and single and additional CableCARDs as well as the fees reasonably allocable to the rental of single and additional CableCARDs and the rental of operator-supplied navigation devices if those devices are included in the price of a bundled offer.

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 962 respondents; 586,712 responses.

Estimated Time per Response: 0.00278 to 40 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement; Annual reporting requirement; Semi-annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended.

Total Annual Burden: 61,353 hours.

Total Annual Cost: $170,300.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: The Commission released on October 14, 2010 a Third Report and Order and Order on Reconsideration, FCC 10–181, CS Docket 97–80 and PP Docket 00–67, (as corrected by an Order on Reconsideration, FCC 11–7, CS Docket 97–80 and PP Docket 00–67) modifying the Commission's rules to implement Section 629 of the Communications Act (Section 304 of the Telecommunications Act of 1996). The rules are modified to (1) Require cable operators to support the reception of switched digital video services on retail devices to ensure that subscribers are able to access the services for which they pay regardless of whether they lease or purchase their devices; (2) prohibit price discrimination against retail devices to support a competitive marketplace for retail devices; (3) require cable operators to allow self-installation of CableCARDs where device manufacturers offer device-specific installation instructions to make the installation experience for retail devices comparable to the experience for leased devices; (4) require cable operators to provide multi-stream CableCARDs by default to ensure that cable operators are providing their subscribers with current CableCARD technology; and (5) clarify that CableCARD device certification rules are limited to certain technical features to make it easier for device manufacturers to get their products to market. These rules are intended to achieve Section 629's directive to assure a retail market for navigation devices, such as set-top boxes, that can access cable services.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–13431 Filed 5–27–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and

other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 1, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0139.

Title: Application for Antenna Structure Registration.

Form No.: FCC Form 854.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; non-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 4,500 respondents; 4,500 responses.

Estimated Time per Response: .50 hours to complete FCC Form 854; 1 hour to place registration number at base of antenna structure.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 303(q), 154, 303, 391 and 309.

Total Annual Burden: 6,750 hours.

Total Annual Cost: $120,600.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

This information collection contains personally identifiable information on individuals which is subject to the Privacy Act of 1974. Information on the FCC Form 854 is maintained in the Commission's system of records, FCC/WTB–1, "Wireless Services Licensing Records." These licensee records are publicly available and routinely used in accordance of Subsection (b) of the Privacy Act, 5 U.S.C. 552a(b), as amended. Materials that are afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for public inspection.

The Commission has in place the following policy and procedures for records retention and disposal: Records will be actively maintained as long as the individual remains a tower owner. Paper records will be archived after being keyed or scanned into the system. Electronic records will be backed up on tape. Electronic and paper records will be maintained for at least twelve years.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension of this information collection (no change to the reporting, recordkeeping and/or third part disclosure requirements).

The FCC Form 854 is used to register structures used for wire or radio communication services in any area where radio services are regulated by the Commission; to make changes to existing structures or pending applications; or to notify the Commission of the completion of construction or dismantlement of structures, as required by Title 47 of the Code of Federal Regulations (CFR) Chapter 1, Part 17 (FCC Rules Part 17). Section 303(q) of the Commissions Act of 1934, as amended, requires the Commission to require the painting and/or illumination of radio towers in cases where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act to: (1) Make antenna structure owners, as well as Commission licensees and permittees responsible for the painting and lighting of antenna structures, and (2) to provide the non-license antenna structure owners may be subject to forfeiture for violations of painting or lighting requirements specified by the Commission.

Currently, each antenna structure owner proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height, or that may interfere with the approach or departure space of a nearby airport runway must notify the Federal Aviation Administration (FAA) of proposed construction. The FAA determines whether the antenna structure constitutes a potential hazard, and may recommend appropriate painting and lighting for the structure. The Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on subject licensees.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–13432 Filed 5–27–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://*

www.fdic.gov/bank/individual/failed/banklist.html or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 25, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10365	Atlantic Southern Bank	Macon	GA	05/20/2011
10366	First Georgia Banking Company	Franklin	GA	05/20/2011
10367	Summit Bank	Burlington	WA	05/20/2011

[FR Doc. 2011–13361 Filed 5–27–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

Report title: The Recordkeeping and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information.

Agency form number: FR 4100.

OMB control number: 7100–0309.

Frequency: Develop customer notice, one-time; Incident notification, event-generated.

Reporters: Financial institutions.

Estimated annual reporting hours: Develop response program, 2,544 hours; Incident notification, 2,952 hours.

Estimated average hours per response: Develop response program, 24 hours; Incident notification, 36 hours.

Number of respondents: Develop response program, 106; Incident notification, 82.

General description of report: This information collection is mandatory (15 U.S.C. 6801(b)). Since the Federal Reserve does not collect information associated with the FR 4100, confidentiality would not generally be an issue. However, confidentiality issues may arise if the Federal Reserve were to obtain a copy of a customer notice during the course of an examination or were to receive a copy of a Suspicious Activity Report (SAR; FR 2230; OMB No. 7100–0212). In such cases the information would be exempt from disclosure to the public under the Freedom of Information Act (5 U.S.C. 552(b)(3), (4), and (8)). Also, a federal employee is prohibited by law from disclosing an SAR or the existence of an SAR (31 U.S.C. 5318(g)).

Abstract: The FR 4100 is the information collection associated with the *Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice* (security guidelines), which was published in the **Federal Register** in March 2005 (70 FR 15736). Trends in customer information theft and the accompanying misuse of that information led to the issuance of these security guidelines applicable to financial institutions. The security guidelines are designed to facilitate timely and relevant notification to affected customers and the appropriate regulatory authority of the financial institutions. The security guidelines provide specific direction regarding the development of response programs and customer notifications.

Current Actions: On March 18, 2011, the Federal Reserve published a notice in the **Federal Register** (76 FR 14971) requesting public comment for 60 days on the extension, without revision, of the FR 4100. The comment period for this notice expired on May 17, 2011.

The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, May 25, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–13323 Filed 5–27–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through August 31, 2014, the current PRA clearance for information collection requirements contained in the Children's Online Privacy Protection Rule ("COPPA Rule"). That clearance expires on August 31, 2011.

DATES: Comments must be received on or before June 30, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "COPPA Rule: Paperwork Comment, FTC File No. P114504" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/coppapra2,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Mamie Kresses, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Mail Drop NJ–3212, Washington, DC 20580, (202) 326–2070.

SUPPLEMENTARY INFORMATION:

Title: Children's Online Privacy Protection Rule, 16 CFR part 312.

OMB Control Number: 3084–0117.

Type of Review: Extension of a currently approved collection.

Abstract: The COPPA Rule contains certain statutorily-required notice requirements that apply to operators of any Web site or online service directed to children, and operators of any Web site or online service with actual knowledge of collecting personal information from children. Covered operators must: Provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure, with limited exceptions; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

On February 9, 2011, the Commission sought comment on the information collection requirements associated with the COPPA Rule. 76 FR 7211. No comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated Annual Burden: 6,100 hours (6,000 hours for disclosure requirements + 100 hours for safe harbor participants' voluntary reporting requirements).

Likely Respondents, Estimated Number of Respondents, Estimated Average Burden per Respondent:

(a) Disclosures—Operators of covered Web sites and online services, 60 hours/operator for 100 new operators annually;

(b) Reporting—Voluntary safe harbor program applicants—100 hours annualized for an estimated single applicant during the prospective 3-year PRA clearance period.

Frequency of Response: Once.

Operators have to maintain the required notice on their Web sites and provide individual direct notices to parents of children newly engaging or registering online at operators' Web sites and online services.

Total Annual Labor Cost: $816,000.[1]

Total Annual Capital or Other Non-Labor Cost: Minimal.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 30, 2011. Write "COPPA Rule: Paperwork Comment, FTC File No. P114504" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[2] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/coppapra2,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "COPPA Rule: Paperwork Comment, FTC File No. P114504" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 30, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If

[1] See 76 FR at 7212–7213 for the details and calculations underlying this total.

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Willard K. Tom,

General Counsel.

[FR Doc. 2011–13357 Filed 5–27–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–11FU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

"Evaluating the Effects of the 'Reality Check' Serial Drama on the HIV-related Attitudes and Behavioral Intentions of African American Youth"—NEW—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this study is to evaluate the effects of an already-created serial drama intervention, "Reality Check," on African American youth in the Atlanta, Georgia area. Young African Americans are very disproportionately affected by HIV/AIDS and other sexually transmitted infections (STIs). Social, demographic, and historic factors contributing to these high disease rates include poverty, poor access to preventive medical services, and homophobia, which causes some men who have sex with men (MSM) to be secretive about these activities and to be reluctant to be tested for HIV. Unfortunately, many persons infected with HIV are unaware of their infection and may be transmitting the virus, especially during the highly infectious acute infection stage. However, persons who become aware of their HIV infections reduce their risky behavior dramatically.

The study will evaluate the effectiveness of the innovative, theory-based HIV risk reduction serial drama intervention, "Reality Check," among African Americans aged 13 to 21 years who attend clubs for youth in the Atlanta Metropolitan Statistical Area (MSA). The hypothesis to be tested is that "Reality Check" is effective in increasing intention for HIV testing, condom use, and abstinence, and in increasing tolerance for persons regardless of HIV status or sexual orientation, as compared with the comparison group. The study will use a cluster randomized trial design, with a wait-list comparison group and pre- and post-intervention assessments. Youth clubs serving minority and disadvantaged youth in the Atlanta MSA will be matched into pairs and randomly assigned to intervention and comparison conditions. The study sample will include at least 500 participants evenly divided between the two conditions. Eligible youth at all participating clubs will be invited to complete the pre-intervention questionnaire. The eligible youth at the intervention clubs will be shown the serial drama, which consists of 27, 3-minute episodes, in its entirety immediately after completing the questionnaire. Four weeks later eligible youth at all participating clubs will be invited to complete the post-intervention questionnaire. Eligible youth at clubs in the comparison group will be shown the serial drama immediately after the post-intervention assessment has been completed. If "Reality Check" is shown to be successful, it can be delivered cost-effectively and with substantial reach via various mechanisms, such as public buses with video monitors, on video kiosks, and on Web sites. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per respondent (in hours)	Total annual burden (in hours)
Directors of youth clubs	Screening and Enlistment Form	30	1	10/60	5
Participating youth	Survey Questionnaire	500	1	15/60	125
Participating youth	Follow-up Questionnaire	425	1	15/60	106
Total					236

Dated: May 20, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–13333 Filed 5–27–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Service Act (PHS); Delegation of Authority

Notice is hereby given that pursuant to Section 3306(14) of the Public Health Service Act (PHS), I have delegated to the Director, Centers for Disease Control and Prevention (CDC), and the Director, National Institute for Occupational Safety and Health (NIOSH), with authority to redelegate, all authority specified in Section 3306(14)(A)(i) of the PHS Act, as amended by the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), except those specific authorities described in section 3306(14)(B) of the PHS Act. This delegation is in addition to those duties specifically assigned to the Director, NIOSH, by Section 3306(14)(A)(ii) of the PHS Act.

Additionally, notice is hereby given that pursuant to Section 3306(14) of the PHS Act, I hereby delegate to the Administrator, Centers for Medicare & Medicaid Services (CMS), with authority to redelegate, responsibility for disbursing payment for the program described in Title XXXIII of the PHS Act, as amended by the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347). Responsibility for determining eligibility and enrolling individuals in the program described in Title XXXIII of the PHS Act and responsibility for determining the payment amounts to be disbursed shall remain with the Director, NIOSH, CDC, pursuant to the delegation in the previous paragraph.

These authorities shall be exercised under the Department's existing delegation of authority and policy on regulations. This authority must also be exercised in accordance with the Department's established policies, procedures, guidelines and regulations and with all other pertinent issuances.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Administrator, CMS, the Director, CDC, the Director, NIOSH, or other CMS and CDC officials which involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: May 18, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–13371 Filed 5–27–11; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10361]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Adjustment to the Medical Loss Ratio Standard for a State's Individual Market; *Use:* Under section 2718 of the Public Health Service Act (PHS Act), a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary beginning in June of 2012 for calendar year 2011. The reported data allows for the calculation of an issuer's medical loss ratio (MLR) by market (individual, small group, and large group) within each State in which the issuer conducts business. The PHS Act establishes a MLR standard for each market segment that issuers must meet. A health insurance issuer who fails to meet the MLR standard for a plan year must rebate to enrollees, on a pro rata basis, the difference between its MLR and the MLR standard.

Section 2718(b)(1)(A)(ii) allows the Secretary to lower the 80% MLR standard in the individual market in a State if the application of the 80% MLR may destabilize the individual market in such State. An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865) and was modified by technical corrections on December 30, 2010 (75 FR 82277), which added Part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January 1, 2011. Under 45 CFR 158.301 (75 FR 74864, 74930), States requesting that HHS lower the MLR standard must submit information that supports their assertion that the individual market in their State may destabilize absent an adjustment to the MLR. Much of the information requested is currently only available at the State level. HHS must have such information in order to ascertain whether market destabilization has a high likelihood of occurring. *Form Number:* CMS–10361 (OMB Control No. 0938–1114); *Frequency:* Once; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 20; *Number of Responses:* 20; *Average Hours per Response:* 185; *Total Annual Hours:* 3,700. (For policy questions regarding this collection, contact Carol Jimenez at (301) 492–4109. For all other issues regarding this collection, call (410) 786–1326.)

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 30, 2011.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: May 25, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–13421 Filed 5–27–11; 8:45 am]

BILLING CODE 4120–01– P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10147, CMS–10396 and CMS–R–246]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection: Standardized Pharmacy Notice:* Your Prescription Cannot be Filled (f/k/a Medicare Prescription Drug Coverage and Your Rights) *Use:* This is a request for approval of changes to a currently approved collection under 42 CFR 423.562(a)(3). This regulatory provision has recently been modified to eliminate the previously available option of posting the standardized notice at the pharmacy. Revised 423.562(a)(3) and an associated regulatory provision at § 423.128(b)(7)(iii) require the pharmacy to provide the Part D enrollee with a printed copy of this standardized notice if the prescription cannot be filled.

The purpose of this notice is to provide enrollees with information about how to contact their Part D plans to request a coverage determination, including a request for an exception to the Part D plan's formulary. The notice reminds enrollees about certain rights and protections related to their Medicare prescription drug benefits, including the right to receive a written explanation from the drug plan about why a prescription drug is not covered. A Part D plan sponsor's network pharmacies are in the best position to notify enrollees about how to contact their Part D plan if the prescription cannot be filled.

As noted in a final rule published April 15, 2011 (76 FR 21432), the option of posting this notice at the pharmacy has been eliminated. If a prescription cannot be filled, the pharmacy must provide the enrollee with a printed copy of this notice. *Form Number:* CMS–10147 (OCN: 0938–0975) *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other For-profits; *Number of Respondents:* 42,000; *Number of Responses:* 37,087,402; *Total Annual Hours:* 617,876. (For policy questions regarding this collection, contact Kathryn McCann Smith at 410–786–7623. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medication Therapy Management Program Improvements—Standardized Format. *Use:* The Medicare Modernization Act of 2003 (MMA) under title 42 CFR part 423, subpart D, established the requirements that Part D sponsors must meet with regard to medication therapy management (MTM) programs. Beginning in 2010, sponsors must offer an interactive, person-to-person comprehensive medication review (CMR) by a pharmacist or other qualified provider at least annually. A CMR is a review of a beneficiary's medications, including prescription and over-the-counter (OTC) medications, herbal therapies, and dietary supplements, which is intended to aid in assessing medication therapy and optimizing patient outcomes. Sponsors must summarize the CMR and provide an individualized written or printed summary to the beneficiary. The burden associated with the time and effort necessary for Part D sponsors to conduct CMRs with written summaries was estimated previously under OMB Control Number 0938–0964 as 937,500 hours with total labor cost of $112.5 million.

The Affordable Care Act (ACA) under Section 10328 specifies that the Secretary, in consultation with relevant stakeholders, develop a standardized format for the action plan and written or printed summary that are given to beneficiaries as a result of their CMRs. The standardized format will replace whatever formats Part D sponsors are using for their written CMR summaries and action plans prior to 2013. Beginning in January, 2013, Part D sponsors will collect information required by the new standardized format, and provide that information to Medicare beneficiaries after their CMRs on forms that comply with the requirements specified by CMS for the standardized format. The use of the standardized format will increase the burden associated with providing the CMRs with written summaries and action plans as described in this submission. The use of the standardized format will support a uniform and consistent level of MTMP communications with beneficiaries, improve the ability of beneficiaries to understand and manage their medications safely and effectively, and support improved healthcare outcomes and lower overall healthcare costs. The final standardized format will be posted in the 2013 Call Letter for implementation by Part D sponsors in January 2013. *Form Number:* CMS–10396 (OCN: 0938–New) *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profits; *Number of Respondents:* 673; *Number of Responses:* 1,875,000; *Total Annual Hours:* 1,179,894. (For policy questions regarding this collection, contact Gary Wirth at 410–786–3997. For all other issues call (410) 786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D and Medicare Fee For Service Consumer Assessment of Healthcare Providers and Systems Survey. *Use:* CMS has fielded the MA Consumer Assessment of Health Care Providers and Systems (CAHPS) Survey annually since 1998, the Medicare FFS CAHPS Survey annually since 2000, and the MA DP and Stand Alone PDP CAHPS survey annually since 2006. The Medicare CAHPS is a national survey of health and prescription drug plans conducted at the contract level for MA, MA PD and Stand Alone PDP plans and at the state level for Medicare fee-for-service. Medicare CAHPS provides data to permit preparation of plan performance measures to assist Medicare beneficiaries in their selection of a health plan, prescription drug plan or both, and help policymakers and others assist the Medicare program and Medicare plans design and monitor patient-centered quality improvement initiatives. The 2009 Call letter for MA and MA PD plans requires these plans to contract with private vendors from a list selected by CMS to conduct the 2011 Medicare CAHPS survey for their plan at the contract level and provide the collected data to CMS for analyses and preparation of CAHPS measures for

use in consumer and plan reports and for quality improvement purposes for MA, MA PD, and Stand Alone PDP plans. CMS will continue to collect the Medicare FFS CAHPS data from surveys at the state and some sub-state levels. This revision to a currently approved collection is to add questions focusing on care coordination. *Form Number:* CMS–R–246 (OCN: 0938–0732) *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profits; *Number of Respondents:* 598,200; *Number of Responses:* 598,200; *Total Annual Hours:* 216,555. (For policy questions regarding this collection, contact Sarah Gaillot at 410–786–4637. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *August 1, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–13328 Filed 5–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10136 and CMS–10303]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Demonstration Ambulatory Care Quality Measure Performance Assessment Tool ("PAT"); *Use:* This request is to cover a modification of an existing, approved data collection effort with a new secure web based system. This system will also provide a platform for developing tools to collect clinical quality data for future demonstrations and programs. There is no increase in burden. In fact, because all of the practices submitting data will have Electronic Health Records (EHRs), it is likely that the originally estimated burden will decrease over the coming years of the demonstration. CMS is requesting an extension of the currently approved tool for the collection of ambulatory care clinical performance measure data.

The data will be used to continue implementation of two Congressionally mandated demonstration projects (the Physician Group Practice (PGP) Demonstration and the Medicare Care Management Performance (MCMP) Demonstration); also the support data collection under the new EHR Demonstration. Each of these demonstrations, test new payment methods for improving the quality and efficiency of health care services delivered to Medicare fee-for-service beneficiaries, especially those with chronic conditions that account for a disproportionate share of Medicare expenditures. In addition, the MCMP and EHR demonstration specifically encourage the adoption of electronic health records systems as a vehicle for improving how health care is delivered. *Form Number:* CMS–10136 (OMB# 0938–0941); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours:* 9600. (For policy questions regarding this collection contact Jodie Blatt at 410–786–6921. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information:* Medicare Gainsharing Demonstration Evaluation: Physician Focus Groups; *Use:* The proposed physician focus groups are part of the evaluation of the Centers for Medicare and Medicaid Services (CMS)'s Medicare Physician Hospital Collaboration Demonstration. The Congress, under Section 646 of the Medicare Modernization Act (MMA) of 2003 permitted CMS to conduct demonstrations to test methods for the provision of incentives for improving the quality and safety of care and achieving the efficient allocation of resources. The primary goal of the demonstration is to evaluate gainsharing as means to align physician and hospital incentives to improve quality and efficiency. This demonstration plans to use the physician focus group protocols approved by OMB for the DRA 5007 Gainsharing Demonstration. *Form Number:* CMS–10303 (*OMB#:* 0938–1103); *Frequency:* Once; *Affected Public:* Private sector, business or other for profits; *Number of Respondents:* 288; *Total Annual Responses:* 144; *Total Annual Hours:* 144 (For policy questions regarding this collection contact William Buczko at 410–786–6593. For all other issues call 410–786–1326.)

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 30, 2011.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: oira_submission@omb.eop.gov.*

Dated: May 25. 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–13330 Filed 5–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1587–N]

Medicare Program; Notification of Closure of St. Vincent's Medical Center

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

ACTION: Notice.

SUMMARY: This notice announces the closure of St. Vincent's Medical Center and the initiation of an application process for hospitals to apply to the Centers for Medicare & Medicaid Services (CMS) to receive St. Vincent's Medical Center's full time equivalent (FTE) resident cap slots.

DATES: We will consider applications received no later than 5 p.m. (e.s.t) September 28, 2011 Applications must be received, not postmarked, by this date.

FOR FURTHER INFORMATION CONTACT: Renate Dombrowski, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5506 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the "Affordable Care Act"), "Preservation of Resident Cap Positions from Closed Hospitals," authorizes the Secretary to redistribute residency slots after a hospital that trained residents in an approved medical residency program(s) closes. Specifically, section 5506 of the Affordable Care Act, amended the Social Security Act (the Act), by adding subsection (vi) to section 1886(h)(4)(H) of the Act and modifying language at section 1886(d)(5)(B)(v) of the Act, to instruct the Secretary to establish a process to increase the full time equivalent (FTE) resident caps for other hospitals based upon the FTE resident caps in teaching hospitals that closed "on or after a date that is 2 years before the date of enactment" (that is, March 23, 2008). In the November 24, 2010 CY 2011 Outpatient Prospective Payment System (OPPS) final rule (75 FR 72212), we established regulations and an application process for qualifying hospitals to apply to CMS to receive direct graduate medical education (GME) and indirect medical education (IME) FTE resident cap slots from the hospital that closed. The procedures we established apply both to teaching hospitals that closed on or after March 23, 2008 and on or before August 3, 2010 and to teaching hospitals that closed after August 3, 2010. For teaching hospitals that closed on or after March 23, 2008 and on or before August 3, 2010, we established an application deadline of April 1, 2011, for a hospital to request cap slots from the closed hospital(s). We also stated in the November 24, 2010 FY 2011 OPPS final rule that hospitals that close at any point after August 3, 2010 will fall into the second category of applications, for which we will provide a separate notice with a future application deadline (75 FR 72215).

II. Provisions of the Notice

CMS has learned of the closure of another teaching hospital that occurred after August 3, 2010. The purpose of this notice is to notify the public of the closure of St. Vincent's Medical Center, provider number 33–0290, in New York City. The hospital's direct GME FTE resident cap is 321.11 and the IME FTE resident cap is 295.86. St. Vincent's Medical Center was located in core-based statistical area (CBSA) 35644. The official date of the termination of the Medicare provider agreement, and therefore, the date of the closure, is October 31, 2010.

In the November 24, 2010 CY 2011 OPPS final rule, we stated that the application deadline for future hospital closures would be 4 months following the issuance of that notice to the public (75 FR 72215). Therefore, hospitals wishing to apply for and receive slots from St. Vincent's Medical Center's FTE resident caps must submit applications to the CMS New York Regional Office and to the CMS Central Office no later than September 28, 2011. Applications must be received, not postmarked, by this date.

We refer readers to *http://www.cms.gov/AcuteInpatientPPS/06_dgme.asp#TopOfPage* to download a copy of the CMS Evaluation Form 5506, which is the application form that hospitals are to use to apply for slots under section 5506 of the Affordable Care Act. We also refer readers to this Web site to access a copy of the CY 2011 OPPS November 24, 2010 final rule, for an explanation of the policy and procedures for applying for slots and the redistribution of the slots under sections 1886(h)(4)(H)(vi) and 1886(d)(5)(B)(v) of the Act, as provided by section 5506 of the Affordable Care Act. The mailing addresses for the CMS New York Regional Office and to the CMS Central Office are included in this application form.

In the November 24, 2010 CY 2011 OPPS final rule, we did not establish a deadline by when CMS would issue the final determinations to hospitals that receive slots under section 5506 of the Affordable Care Act. However, we will review all applications received by the September 28, 2011 deadline and notify applicants of our determinations as soon as possible.

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).

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

Dated: May 19, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–13478 Filed 5–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Measurement Development: Quality of Caregiver-Child Interactions for Infants and Toddlers (Q–CCIIT).

OMB No.: New collection.

Description: The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to develop a new observation measure to assess the quality of child care settings, specifically the quality of caregiver-child interaction for infants and toddlers in nonparental care. The measure will be appropriate for use across child care settings, center-based and family child care settings as well as single- and mixed-age classrooms.

The two-year data collection activity will include two phases: (1) A pilot test and (2) a psychometric field test. We will request information about the child care setting, its classrooms and families for recruitment into the study. Information will be collected through observations, focus groups, and questionnaires.

In the pilot and field tests, the new Q–CCIIT observation measure will include observing a small group activity structured with a common task and asking follow-up observation questions. Caregivers observed will also complete a background questionnaire. Focus groups to obtain stakeholder input on caregiver-child interactions will be conducted separately with parents, caregivers, and training and technical assistance providers. Focus group participants will also complete a demographic questionnaire. Parents of children served by caregivers will complete a questionnaire on their child's competencies related to cognitive, language/communication, and social-emotional development. Parents will complete this questionnaire, which will also include family and child characteristics, once in the pilot test and twice in the field test, at the start of the field test and 6 months later to assess growth.

The purpose of this data collection is to support the 2007 reauthorization of the Head Start program (Pub. L. 110–134), which calls for periodic assessments of Head Start's quality and effectiveness.

Respondents: Child care setting representatives (directors or owners), caregivers (center-based and family child care settings), parents of children in those child care settings, and training and technical assistance providers.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Estimated annual burden hours
1. Child care setting recruitment form	190	1	0.5	95
2. Q–CCIIT measure-small group activity and follow-up	290	1	0.25	73
3. Caregiver background questionnaire	520	1	0.25	130
4. Focus group interview guide	20	1	1.90	38
5. Parent focus group demographic questionnaire	10	1	0.10	1
6. Caregiver focus group demographic questionnaire	5	1	0.10	1
7. Training and technical assistance provider focus group demographic questionnaire	5	1	0.10	1
8. Parent-report child competence questionnaire	880	2	0.75	1,320

Estimated Total Annual Burden Hours: 1,659.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

OPRE Reports Clearance Officer.

[FR Doc. 2011–13300 Filed 5–27–11; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities; Notice of Correction of Room for Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID).

ACTION: Notice of correction of room for meeting.

DATES: Thursday, June 16, 2011, from 9:30 a.m. to 4 p.m. E.S.T.; and Friday, June 17, 2011, from 9 a.m. to 5 p.m. E.S.T. The meeting will be open to the public.

ADDRESSES: The meeting will be held in Conference Room 505–A of the Hubert H. Humphrey Building, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201. Individuals who would like to participate via conference call may do so by dialing 888–323–9869, *pass code:* PCPID. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Genevieve Swift, PCPID Executive Administrative Assistant, via e-mail at *Edith.Swift@acf.hhs.gov,* or via telephone at 202–619–0634, no later than June 10, 2011. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline. All meeting sites are barrier free.

Agenda: PCPID will meet to swear-in the new members of the Committee and set the agenda for the coming year.

Additional Information: For further information, please contact Laverdia Taylor Roach, Director, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447. *Telephone:* 202–619–0634. *Fax:* 202–205–9519. *E-mail: LRoach@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human

Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: May 24, 2011.

Laverdia Taylor Roach,

Director, PCPID.

[FR Doc. 2011–13337 Filed 5–27–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0362]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's Current Good Manufacturing Practice (CGMP) Regulations for Finished Pharmaceuticals.

DATES: Submit either electronic or written comments on the collection of information by August 1, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7392, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—21 CFR Parts 210 and 211 (OMB Control Number 0910–0139)—Extension

Under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351(a)(2)(B)), a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with CGMPs to ensure that such drug meets the requirements of the FD&C Act as to safety, and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

FDA has the authority under section 701(a) of the FD&C Act (21 U.S.C. 371(a)) to issue regulations for the efficient enforcement of the FD&C Act regarding CGMP procedures for manufacturing, processing, and holding drugs and drug products. The CGMP regulations help ensure that drug products meet the statutory requirements for safety and have their purported or represented identity, strength, quality, and purity characteristics. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to protect public health and safety. CGMP requirements establish accountability in the manufacturing and processing of drug products, provide for meaningful FDA inspections, and enable manufacturers to improve the quality of drug products over time. The CGMP recordkeeping requirements also serve preventive and remedial purposes and provide crucial information if it is necessary to recall a drug product.

The general requirements for recordkeeping under part 211 (21 CFR part 211) are set forth in § 211.180. Any production, control, or distribution record associated with a batch and required to be maintained in compliance with part 211 must be retained for at least 1 year after the expiration date of the batch and, for certain over the counter (OTC) drugs, 3 years after distribution of the batch (§ 211.180(a)). Records for all components, drug product containers, closures, and labeling are required to be maintained for at least 1 year after the expiration date and 3 years for certain OTC products (§ 211.180(b)).

All part 211 records must be readily available for authorized inspections during the retention period (§ 211.180(c)), and such records may be retained either as original records or as true copies (§ 211.180(d)). In addition, 21 CFR 11.2(a) provides that "for records required to be maintained but not submitted to the Agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met." To the extent this electronic option is used, the burden of maintaining paper records should be substantially reduced, as should any review of such records.

In order to facilitate improvements and corrective actions, records must be maintained so that data can be used for evaluating, at least annually, the quality

standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures (§ 211.180(e)). Written procedures for these evaluations are to be established and include provisions for a review of a representative number of batches and, where applicable, records associated with the batch; provisions for a review of complaints, recalls, returned or salvaged drug products; and investigations conducted under § 211.192 for each drug product.

The specific recordkeeping requirements provided in table 1 of this document are as follows:

Section 211.34—Consultants advising on the manufacture, processing, packing, or holding of drug products must have sufficient education, training, and experience to advise on the subject for which they are retained. Records must be maintained stating the name, address, and qualifications of any consultants and the type of service they provide.

Section 211.67(c)—Records must be kept of maintenance, cleaning, sanitizing, and inspection as specified in §§ 211.180 and 211.182.

Section 211.68—Appropriate controls must be exercised over computer or related systems to assure that changes in master production and control records or other records are instituted only by authorized personnel.

Section 211.68(a)—Records must be maintained of calibration checks, inspections, and computer or related system programs for automatic, mechanical, and electronic equipment.

Section 211.68(b)—All appropriate controls must be exercised over all computers or related systems and control data systems to assure that changes in master production and control records or other records are instituted only by authorized persons.

Section 211.72—Filters for liquid filtration used in the manufacture, processing, or packing of injectable drug products intended for human use must not release fibers into such products.

Section 211.80(d)—Each container or grouping of containers for components or drug product containers or closures must be identified with a distinctive code for each lot in each shipment received. This code must be used in recording the disposition of each lot. Each lot must be appropriately identified as to its status.

Section 211.100(b)—Written production and process control procedures must be followed in the execution of the various production and process control functions and must be documented at the time of performance. Any deviation from the written procedures must be recorded and justified.

Section 211.105(b)—Major equipment must be identified by a distinctive identification number or code that must be recorded in the batch production record to show the specific equipment used in the manufacture of each batch of a drug product. In cases where only one of a particular type of equipment exists in a manufacturing facility, the name of the equipment may be used in lieu of a distinctive identification number or code.

Section 211.122(c)—Records must be maintained for each shipment received of each different labeling and packaging material indicating receipt, examination, or testing.

Section 211.130(e)—Inspection of packaging and labeling facilities must be made immediately before use to assure that all drug products have been removed from previous operations. Inspection must also be made to assure that packaging and labeling materials not suitable for subsequent operations have been removed. Results of inspection must be documented in the batch production records.

Section 211.132(c)—Certain retail packages of OTC drug products must bear a statement that is prominently placed so consumers are alerted to the specific tamper-evident feature of the package. The labeling statement is required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-evident feature chosen is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement.

Section 211.132(d)—A request for an exemption from packaging and labeling requirements by a manufacturer or packer is required to be submitted in the form of a citizen petition under 21 CFR 10.30.

Section 211.137—Requirements regarding product expiration dating and compliance with 21 CFR 201.17 are set forth.

Section 211.160(a)—The establishment of any specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms, including any change in such specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms, must be drafted by the appropriate organizational unit and reviewed and approved by the quality control unit. These requirements must be followed and documented at the time of performance. Any deviation from the written specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms must be recorded and justified.

Section 211.165(e)—The accuracy, sensitivity, specificity, and reproducibility of test methods employed by a firm must be established and documented. Such validation and documentation may be accomplished in accordance with § 211.194(a)(2).

Section 211.166(c)—Homeopathic drug product requirements are set forth.

Section 211.173—Animals used in testing components, in-process materials, or drug products for compliance with established specifications must be maintained and controlled in a manner that assures their suitability for their intended use. They must be identified, and adequate records must be maintained showing the history of their use.

Section 211.180(e)—Written records required by part 211 must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures. Written procedures must be established and followed for such evaluations and must include provisions for a representative number of batches, whether approved or unapproved or rejected, and a review of complaints, recalls, returned or salvaged drug products, and investigations conducted under § 211.192 for each drug product.

Section 211.180(f)—Procedures must be established to assure that the responsible officials of the firm, if they are not personally involved in or immediately aware of such actions, are notified in writing of any investigations, conducted under §§ 211.198, 211.204, or 211.208, any recalls, reports of inspectional observations issued, or any regulatory actions relating to good manufacturing practices brought by FDA.

Section 211.182—Specifies requirements for equipment cleaning records and the use log.

Section 211.184—Specifies requirements for component, drug product container, closure, and labeling records.

Section 211.186—Specifies master production and control records requirements.

Section 211.188—Specifies batch production and control records requirement.

Section 211.192—Specifies the information that must be maintained on the investigation of discrepancies found in the review of all drug product

production and control records by the quality control staff.

Section 211.194—Explains and describes laboratory records that must be retained.

Section 211.196—Specifies the information that must be included in records on the distribution of the drug.

Section 211.198—Specifies and describes the handling of all complaint files received by the applicant.

Section 211.204—Specifies that records be maintained of returned and salvaged drug products and describes the procedures involved.

Written procedures, referred to here as standard operating procedures (SOPs), are required for many part 211 records. The current SOP requirements were initially provided in a final rule published in the **Federal Register** of September 29, 1978 (43 FR 45014), and are now an integral and familiar part of the drug manufacturing process. The major information collection impact of SOPs results from their creation. Thereafter, SOPs need to be periodically updated. A combined estimate for routine maintenance of SOPs is provided in table 1 of this document. The 25 SOP provisions under part 211 in the combined maintenance estimate include:

Section 211.22(d)—Responsibilities and procedures of the quality control unit;

Section 211.56(b)—Sanitation procedures;

Section 211.56(c)—Use of suitable rodenticides, insecticides, fungicides, fumigating agents, and cleaning and sanitizing agents;

Section 211.67(b)—Cleaning and maintenance of equipment;

Section 211.68(a)—Proper performance of automatic, mechanical, and electronic equipment;

Section 211.80(a)—Receipt, identification, storage, handling, sampling, testing, and approval or rejection of components and drug product containers or closures;

Section 211.94(d)—Standards or specifications, methods of testing, and methods of cleaning, sterilizing, and processing to remove pyrogenic properties for drug product containers and closures;

Section 211.100(a)—Production and process control;

Section 211.110(a)—Sampling and testing of in-process materials and drug products;

Section 211.113(a)—Prevention of objectionable microorganisms in drug products not required to be sterile;

Section 211.113(b)—Prevention of microbiological contamination of drug products purporting to be sterile, including validation of any sterilization process;

Section 211.115(a)—System for reprocessing batches that do not conform to standards or specifications, to insure that reprocessed batches conform with all established standards, specifications, and characteristics;

Section 211.122(a)—Receipt, identification, storage, handling, sampling, examination and/or testing of labeling and packaging materials;

Section 211.125(f)—Control procedures for the issuance of labeling;

Section 211.130—Packaging and label operations, prevention of mixup and cross contamination, identification and handling of filed drug product containers that are set aside and held in unlabeled condition, and identification of the drug product with a lot or control number that permits determination of the history of the manufacture and control of the batch;

Section 211.142—Warehousing;

Section 211.150—Distribution of drug products;

Section 211.160—Laboratory controls;

Section 211.165(c)—Testing and release for distribution;

Section 211.166(a)—Stability testing;

Section 211.167—Special testing requirements;

Section 211.180(f)—Notification of responsible officials of investigations, recalls, reports of inspectional observations, and any regulatory actions relating to good manufacturing practice;

Section 211.198(a)—Written and oral complaint procedures, including quality control unit review of any complaint involving specifications failures, and serious and unexpected adverse drug experiences;

Section 211.204—Holding, testing, and reprocessing of returned drug products; and

Section 211.208—Drug product salvaging.

In addition, the following regulations in parts 610 and 680 (21 CFR parts 610 and 680) reference certain CGMP regulations in Part 211: Sections 610.12(h), 610.13(a)(2), 610.18(d), 680.2(f), and 680.3(f). In table 1 of this document, the burden associated with the information collection requirements in these regulations is included in the burden estimates under §§ 211.165, 211.167, 211.188, and 211.194, as appropriate.

Although most of the CGMP provisions covered in this document were created many years ago, there will be some existing firms expanding into new manufacturing areas and startup firms that will need to create SOPs. As provided in table 1 of this document, FDA is assuming that approximately 100 firms will have to create up to 25 SOPs for a total of 2,500 records, and the Agency estimates that it will take 20 hours per recordkeeper to create 25 new SOPs for a total of 50,000 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours) [2]	Total hours
SOP maintenance (see list of 25 SOPs in the **SUPPLEMENTARY INFORMATION** section of this document)	4,184	1	4,184	25	104,600
New startup SOPs	100	25	2500	20	50,000
211.34	4,184	.25	1,046	30/60	523
211.67(c)	4,184	50	209,200	15/60	52,300
211.68	4,184	2	8,368	1	8,368
211.68(a)	4,184	10	41,840	30/60	20,920
211.68(b)	4,184	5	20,920	15/60	5,230
211.72	4,184	.25	1,046	1	1,046
211.80(d)	4,184	.25	1,046	6/60	105
211.100(b)	4, 184	3	12,552	2	25,104
211.105(b)	4,184	.25	1,046	15/60	262
211.122(c)	4,184	50	209,200	15/60	52,300
211.130(e)	4,184	50	209,200	15/60	52,300

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours) [2]	Total hours
211.132(c)	1,698	20	33,960	30/60	16,980
211.132(d)	1,698	.2	340	30/60	170
211.137	4,184	5	20,920	30/60	10,460
211.160(a)	4,184	2	8,368	1	8,368
211.165(e)	4,184	1	4,184	1	4,184
211.166(c)	4,184	2	8,368	30/60	4,184
211.173	1,077	1	1,077	15/60	269
211.180(e)	4,184	.2	837	15/60	209
211.180(f)	4,184	.2	837	1	837
211.182	4,184	2	8,368	15/60	2,092
211.184	4,184	3	12,552	30/60	6,276
211.186	4,184	10	41,840	2	83,680
211.188	4,184	25	104,600	2	209,200
211.192	4,184	2	8,368	1	8,368
211.194	4,184	25	104,600	30/60	52,300
211.196	4,184	25	104,600	15/60	26,150
211.198	4,184	5	20,920	1	20,920
211.204	4,184	10	41,840	30/60	20,920
Total					848,625

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response] /60."

Dated: May 24, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13441 Filed 5–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0010]

Cooperative Arrangement Between the United States Food and Drug Administration and the Inter-American Institute for Cooperation in Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a cooperative arrangement between FDA and the Inter-American Institute for Cooperation in Agriculture. The purpose of the arrangement is to provide a framework between the two Agencies to facilitate the exchange of information and the development of projects of mutual interest.

DATES: The arrangement became effective on April 15, 2011, for a duration of 5 years.

FOR FURTHER INFORMATION CONTACT: Moises O'Neill, Office of International Programs, Food and Drug Administration, 3440 San Jose Pl., Washington, DC 20521–3440, Tel. 506–2519–2220.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(a) and (c), which states that all written arrangements and understandings signed by FDA and other departments, Agencies, and organizations shall be published in the **Federal Register**, except those arrangements and memoranda of understanding between FDA and State or local government Agencies that are cooperative work-sharing arrangements, the Agency is publishing notice of this cooperative arrangement.

Dated: May 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

BILLING CODE 4160–01–P

Cooperative Arrangement
Between
The United States Food and Drug Administration
And
The Inter-American Institute for Cooperation on Agriculture

I. Purpose

This Arrangement provides a framework between the United States (U.S.) Food and Drug Administration (FDA) and the Inter-American Institute for Cooperation on Agriculture (IICA) (hereafter referred to as the Participants) to facilitate the exchange of information and the development of projects of mutual interest.

Nothing in this Arrangement is intended to affect existing arrangements between the Participants.

II. Scope

FDA and IICA share a common interest in developing productive, safe, high quality food and agricultural systems consistent with public health principles; and in sharing expertise and technology in support of improved public health outcomes in the Americas. The technical and human resources of FDA and IICA, when brought together on projects of mutual interest related to food safety, have the potential to benefit IICA member states and their populations, including U.S. consumers. Activities of mutual interest may be developed in any area consistent with the parties' missions and strategic plans, including, but not limited to good agricultural practices, aquaculture, as well as food safety outreach, education, research, and technical assistance/capacity building.

III. Types of Cooperative Activities

Cooperative activities may include, but are not limited to, the following.

- Studies, research, scientific exchanges, technology transfer/innovation and other types of scientific and technological cooperation.
- Short-term specialized analytical and advisory projects such as the provision of technical services in connection with a specific project or program by means of a technical mission or individual expert(s).
- Technical and/or administrative support for the preparation and execution of projects.
- Publication of documents.
- Training, either in-service or through courses, seminars, study trips, and/or program work with academic institutions.
- Exchange of information, statistical data and methodologies.
- Personnel exchanges.

- Reciprocal invitations to meetings on technical or policy matters of mutual interest.
- Technical cooperation on public health and trade-related matters related to sanitary and phyto-sanitary (SPS) measures.
- Organization and sponsoring of conferences or workshops on subjects of common interest.

IV. Operating Procedures

The performance of specific activities may be subject to additional documentation as decided by the Participants.

V. Contacts

For purposes of this general arrangement, the representatives of the parties shall be:

For FDA:
Associate Commissioner for International Programs
Office of International Programs
United States Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
United States of America
Tel. +1.301.796.4600
Facsimile: +1.301.595.7937

For IICA
Director
Technical Cooperation Directorate
Inter-American Institute for Cooperation on Agriculture
P.O. Box 55-2200 Coronado
San Jose, Vazquez de Coronado, San Isidro 11101
Costa Rica
Tel: +506.2216.0222
Facsimile: +506.2216.0233

VI. Final Provisions

This Arrangement takes effect on the date it is signed by both Participants and remains in effect for a period of 5 years unless either Participant, after due consideration, provides an official three-month advance notice to the other Participant of its desire to terminate the Arrangement. Early termination of the present Arrangement would not affect the progress and conclusion of specific activities.

The performance of specific activities may be subject to additional documentation or application procedures as decided or as required by the Participants.

The terms of this Arrangement may be amended only by mutual written consent of the Participants, with such amendments appended hereto.

The present Agreement may be extended for additional periods, as decided to by the Participants following an analysis on the achieved results three months prior to its conclusion. Renewals may be achieved by means of an Addendum appended hereto.

This Arrangement is not intended to create obligations under international or other law.

Signed on behalf of FDA:

Murray M. Lumpkin, M.D., M.Sc.

Deputy Commissioner
International Programs

Food and Drug Administration
10903 New Hampshire Avenue
Building 31
Silver Spring, MD 20993
UNITED STATES OF AMERICA

Tel: +1.301.796.8400
Facsimile: +1.301.595.7937

Date: 4-5-2011
April 5, 2011

Signed on behalf of IICA:

James French

Director
Technical Cooperation

Inter-American Institute for Cooperation on Agriculture
P.O. Box 55-2200 Coronado
San Jose, Vazquez de Coronado, San Isidro 11101
COSTA RICA

Tel: +506.2216.0222
Facsimile: +506.2216.0233

Date: 04-15-2011
April 15-2011

[FR Doc. 2011–13440 Filed 5–27–11; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–E–0328, FDA–2010–E–0324, and FDA–2010–E–0325]

Determination of Regulatory Review Period for Purposes of Patent Extension; ACTEMRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ACTEMRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human biological product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human biologic product ACTEMRA (tocilizumab). ACTEMRA is indicated for treatment of rheumatoid arthritis. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for ACTEMRA (U.S. Patent Nos. 5,670,373 and 5,795,965), filed by Chugai Seiyaku Kabushiki Kaisha, and for U.S. Patent No. 5,888,510, filed by Chugai Seiyaku Kabushiki Kaisha and Tadamitsu Kishimoto for ACTEMRA. The Patent and Trademark Office requested FDA's assistance in determining these patents' eligibilities for patent term restoration. In a letter dated September 30, 2010, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of ACTEMRA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ACTEMRA is 1,893 days. Of this time, 1,111 days occurred during the testing phase of the regulatory review period, while 782 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* November 4, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 4, 2004.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262*): November 19, 2007. FDA has verified the applicant's claim that the biologics license application (BLA) for ACTEMRA (BLA 125276/0) was initially submitted on November 19, 2007.

3. *The date the application was approved:* January 8, 2010. FDA has verified the applicant's claim that BLA 125276/0 was approved on January 8, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,338 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by August 1, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 28, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 15, 2011.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2011–13388 Filed 5–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee to the Director, National Institutes of

Health (NIH), June 9, 2011, 9:30 a.m. to June 10, 2011, 12 p.m., 31 Center Drive, Building 31, C–Wing, Conference Room 6, Bethesda, MD, 20892 which was published in the **Federal Register** on May 13, 2011, 76 FR 28055.

The open sessions of the Advisory Committee to the Director, NIH, will be held on June 9, 2011, 9:30 a.m. to 3:45 p.m. and June 10, 2011, 8:30 a.m. to 12 p.m. The closed session of the Advisory Committee to the Director, NIH, will be held on June 9, 2011, 4 p.m. to 5 p.m.. The meeting location remains the same.

Dated: May 24, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13353 Filed 5–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Public Workshop; Privacy Compliance Basics and 2011 Developments

AGENCY: Privacy Office, DHS.

ACTION: Notice announcing public workshop.

SUMMARY: The Department of Homeland Security Privacy Office will host a public workshop, "Privacy Compliance Basics and 2011 Developments."

DATES: The workshop will be held on June 24 and 27, 2011, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The workshop will be held in the auditorium at the DHS Offices at the GSA Regional Headquarters Building located at 7th and D Streets, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Shannon Kelso, Privacy Office, Department of Homeland Security, Washington, DC 20528; by telephone 703–235–0780; by facsimile 703–235–0442; or by e-mail at *PIA@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) Privacy Office is holding a public workshop that will provide in-depth training on the privacy compliance process at DHS. June 24 is a primer for the new and developing privacy professional, presenting baseline Federal privacy compliance requirements including the Privacy Act of 1974, as amended, the E-Government Act of 2002, Office of Management and Budget memoranda, and other policy. June 27 consists of advanced presentations for the experienced privacy professional, including review of recent Privacy Act rulings, program case studies, mapping to IT security requirements, and developments in privacy compliance at the Department.

Individuals are invited to attend just one or both days. The workshop is open to the public and there is no fee for attendance.

Registration and Security: In order to facilitate security requirements of the GSA facility, attendees must register in advance for this workshop. Registration closes at 9 a.m., Wednesday, June 22, 2011. To register, please send an e-mail to *PIA@dhs.gov,* with "PRIVComplianceWorkshop" in the subject line, and your full name and organizational affiliation in the body of the e-mail. Alternatively, you may call 703–235–0780 to register by providing the Privacy Office with your full name and organizational affiliation.

All attendees who are employed by a federal agency will be required to show their federal agency employee photo identification badge to enter the building. Attendees who do not possess a federal agency employee photo identification badge will need to show a form of government-issued photo identification, such as a driver's license, in order to verify their previously-provided registration information. This is a security requirement of the facility.

The Privacy Office will only use your name for the security purposes of this specific workshop and to contact you in the event of a change to the workshop.

Special Assistance: Persons with disabilities who require special assistance should indicate this in their admittance request and are encouraged to identify anticipated special needs as early as possible.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–13415 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0357]

Cruise Vessel Safety and Security Act of 2010, Available Technology

AGENCY: Coast Guard, DHS.

ACTION: Notice of request for comments; correction.

SUMMARY: In the **Federal Register** published on May 25, 2011, the United States Coast Guard solicited public comment on the availability of technology to meet certain provisions of the Cruise Vessel Security and Safety Act of 2010(CVSSA), specifically related to video recording and overboard detection technologies. The Notice of request for comments published with errors in the preamble, specifically, the addresses for submitting comments was incorrect and should have directed commenters to *http://www.regulations.gov* for online comment submissions, and to 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 20590–0001" for mailing comments.

DATES: This correction is effective May 31, 2011.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Jennifer Mehaffey, Office of Regulations and Administrative Law, (202) 372–3859, or by email at *jennifer.a.mehaffey@uscg.mil.* For information about the original regulation, call or e-mail Lieutenant Commander Latasha Pennant, Office of Design and Engineering Standards (CG–5211), U.S. Coast Guard Headquarters, by telephone at 202–372–1358, or by e-mail at *Latasha.E.Pennant@uscg.mil.*

SUPPLEMENTARY INFORMATION: In FR doc 2011–12988 appearing on page 30374 in the issue of Wednesday, May 25, 2011, the following corrections are made:

1. On page 30374, in the second column, revise the **ADDRESSES** section, to read as follows:

"**ADDRESSES**: You may submit comments identified by docket number USCG–2011–0357 using any one of the following methods:

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

(2) *Fax:* 202–372–1925.

(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."

2. On page 30374, in the third column, revise the **SUPPLEMENTARY INFORMATION** section, to read as follows:

"Public Participation and Request for Comments

We encourage you to submit comments and related material. 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–2011–0357) and provide a reason for each comment or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. 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* and type "USCG–2011–0357" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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 the comments and related material: To view the comments 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–2011–0357" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting 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, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316)."

Dated: May 25, 2011.

Kathryn Sinniger,

Office of Regulations and Administrative Law (CG–0943), U.S. Coast Guard.

[FR Doc. 2011–13437 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1146]

Safety Requirements and Manning Exemption Eligibility on Distant Water Tuna Fleet Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Office of Vessel Activities Policy Letter 11–05 regarding Distant Water Tuna Fleet vessels manning exemption eligibility and safety requirements. This final policy clarifies the requirements to allow a distant water tuna fleet vessel to engage foreign citizens under a temporary manning exemption.

DATES: This policy will become effective on July 1, 2011.

ADDRESSES: This notice and the policy are available in the docket and can be viewed by going to *http://www.regulations.gov,* inserting USCG–2011–1146 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. This policy is also available at *http://www.fishsafe.info/CG–543* Policy Letter 11–05.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Jack A. Kemerer, Fishing Vessel Safety Division (CG–5433), U.S. Coast Guard; telephone 202–372–1249, e-mail *jack.a.kemerer@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

Background and Purpose

The Coast Guard Maritime Transportation Act (CGMTA) of 2006 (section 421) authorized U.S.-documented purse seine vessels fishing for highly migratory species (under a license issued pursuant to the 1987 South Pacific Tuna Treaty [SPTT]) to use foreign licensed personnel, except for the master, to meet manning requirements. That authorization was for a 48-month period and ended on July 11, 2010. Section 904 of the 2010 Coast Guard Authorization Act (CGAA, signed into law (Pub. L. 111–281) on October 15, 2010) reauthorized the use of foreign officers, excluding the master, on U.S.-documented purse seine vessels in the Distant Water Tuna Fleet. The CGAA reauthorization added a safety examination requirement such that a vessel's owner/operator may not employ a foreign national to meet a manning requirement unless it first successfully completes an annual dockside safety examination by an individual authorized to enforce part B of subtitle II of title 46, United States Code. Additionally, the 2010 CGAA also amended Title 46 United States Code Section 4502 by establishing requirements for an individual in charge of a vessel to keep a record of equipment maintenance, and required instruction and drills, and for a vessel to be issued a certificate of compliance upon successfully completing a dockside safety examination. The reauthorization retained the restriction that a foreign officer engaged to fill a position must hold a valid license or certificate issued in accordance with STCW 95 standards and by an authority recognized by the Coast Guard. Also, the manning exemption is only applicable to vessels operating in and out of America Samoa. The manning exemption reauthorization is set to expire December 31, 2012.

Discussion of Summary of Comments Received and Changes

The Coast Guard published a Notice of Availability and Request for Comments on a draft policy; Safety Requirements and Manning Exemption Eligibility on Distant Water Tuna Fleet Vessels in the **Federal Register** on January 20, 2011 Docket Number [USCG–2010–1146]. We received comments from eight individuals in response to the draft Safety Requirements and Manning Exemption Eligibility on Distant Water Tuna Fleet Vessels policy.[1] A general summary of the comments received and the United States Coast Guard's responses to those comments are presented below.

One commenter supported eliminating the manning exemption permanently while seven commenters

[1] Although the comment period on the notice was set to close on February 22, 2011, the Coast Guard was able to consider all comments submitted to the docket prior to March 1, 2011.

suggested they support the manning exemption, at least to some extent.

Four commenters suggested the timely notice requirement for engaging foreign officers is too burdensome or impracticable. The Coast Guard agrees in some cases that a timely advance notice of a vacancy may be impracticable. The Coast Guard has revised its final policy guidance under 6.(a)(v) to include the wording "to the extent practicable." However, since licensed positions often have contracts associated with them, it is reasonable for an owner/operator to have an idea when a position may become vacant and to advertise appropriately. The Coast Guard considered timely notice further and reduced the position vacancy announcement from 60 days to 30 days for a position becoming available.

Five commenters suggested qualified U.S.-licensed mariners are hard to find, while one commenter suggested the exemption was meant only for vessels working from American Samoa, and temporary so owners could train U.S. citizens to fill officer vacancies. The Coast Guard agrees that the temporary exemption is a recognition of the difficulty DWTF vessel owners/operators have historically dealt with when seeking to find qualified U.S.-licensed mariners, but notes that the temporary exemption represents an additional opportunity for DWTF vessel owners/operators to develop capacity and skills of United States mariners to fill licensed positions on those vessels.

Two commenters supported at least annual port calls in American Samoa while two commenters did not support requiring port calls in American Samoa. The Coast Guard maintains that at least one annual port call in American Samoa shall occur if foreign licensed mariners are sought and utilized on a United States flagged DWTF vessel, as the manning exemption is only applicable to vessels operating in and out of America Samoa.

One commenter supported adding Taiwan to the list of acceptable countries listed in the International Maritime Organizations (IMO's) so called "White List." This comment is outside of the scope of the policy announced in this policy letter, as the United States cannot on its own revise the IMO "White List".

One commenter offered alternative proposals to demonstrate non-availability of U.S. Officers. The Coast Guard, on a case-by-case basis, may consider alternative approaches in demonstrating non-availability if the approach demonstrates that the vessel owner/operator satisfies the requirements of the law.

One commenter suggested the policy cannot be classified as an interpretive rule because the policy imposes additional duties and requirements. The Coast Guard disagrees; any additional duties and requirements may be traced to the statutory exemption. For instance, the law requires that there be non-availability of United States licensed workers; this policy describes the means by which a DWTF vessel owner/operator may demonstrate such non-availability, namely by recounting the good faith efforts made to locate and hire United States licensed mariners. However, in response to this comment, the Coast Guard reduced some of the information requested in the draft policy, including wages, benefits, and Department of Labor worker codes.

The final policy lists an additional item under Guidance 6 a.(vii) not listed in the draft policy that requires the owner/operator to make a written agreement with each seaman employed on the vessel, on a voyage from a port in the United States. This existing legal requirement can be found in Title 46 United States Code § 10601 (Fishing Agreements), and was added to the policy to aid in compliance.

This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: May 20, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–13319 Filed 5–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1980–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1980–DR), dated May 9, 2011, and related determinations.

DATES: *Effective Date:* May 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 9, 2011.

Cape Girardeau, Howell, McDonald, Pulaski, Ripley, Scott, Stoddard, and Stone Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13457 Filed 5–27–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1966–DR; Docket ID FEMA–2011–0001]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1966–DR), dated April 5, 2011, and related determinations.

DATES: *Effective Date:* May 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major

disaster by the President in his declaration of April 5, 2011.

Walworth County for emergency protective measures [Category B], including snow assistance, under the Public Assistance program for an additional 24-hour period during or proximate to the incident period (already designated for Public Assistance and emergency protective measures [Category B], including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13456 Filed 5–27–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0001; Internal Agency Docket No. FEMA–1976–DR]

Kentucky; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

DATES: *Effective date:* May 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 20, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13455 Filed 5–27–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Agency Information Collection Activities: Crewman's Landing Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information: 1651–0114.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Crewman's Landing Permit (CBP Form I–95). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 1, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn:* Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Alien Crewman Landing Permit.

OMB Number: 1651–0114.

Form Number: Form I–95.

Abstract: CBP Form I–95, *Crewman's Landing Permit,* is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for alien crewmen applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each nonimmigrant alien crewman on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I–95 serves as the physical evidence that an alien crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmen arriving by vessel or air. CBP Form I–95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at *http://forms.cbp.gov/pdf/CBP_Form_I95.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 433,000.

Total Number of Estimated Annual Responses: 433,000.

Estimated time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 35,939.

Dated: May 24, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–13302 Filed 5–27–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning the Transit Connect Electric Vehicle

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of the Transit Connect Electric Vehicle. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the vehicle for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 24, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Kunzinger, Valuation and Special Programs Branch: (202) 325–0359.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 24, 2011, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the Transit Connect Electric Vehicle which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H155115, was issued at the request of Azure Dynamics under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the Transit Connect Electric Vehicle, assembled in the United States from parts made in the United States, Turkey, Switzerland, Hungary, Japan, Germany, Canada, the United Kingdom, and various other countries is substantially transformed in the United States, such that the United States is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 24, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H155115

May 24, 2011
OT:RR:CTF:VS H155115 BGK
CATEGORY: Marking

Scott T. Harrison
Chief Executive Officer
Azure Dynamics Corporation
14925 W 11 Mile Road
Oak Park, MI 48237

RE: Government Procurement; Country of Origin of Electric Vehicles; Substantial Transformation

Dear Mr. Harrison:

This is in response to your letter, dated March 16, 2011, as amended April 6, 2011, and April 7, 2011, requesting a final determination on behalf of Azure Dynamics (Azure), pursuant to subpart B of 19 C.F.R. part 177.

Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Transit Connect Electric Vehicle (TCE). We note that Azure, the U.S. importer and manufacturer, is a party-at-interest within the meaning of 19 C.F.R. 177.22(d)(1) and is entitled to request this final determination under 19 C.F.R. 177.23(a).

FACTS:

Azure purchases and imports a Transit Connect glider from Turkey. A glider is a non-functional base without a powertrain or exhaust components, and consists of a frame, body, axles, and wheels. The TCE is then assembled in the U.S. from both imported and U.S.-origin components.

A Bill of Materials was submitted with the request. Apart from the glider, parts for the TCE are also imported from Switzerland, Hungary, Japan, Germany, Canada, the United Kingdom, and various other countries. According to the submission, the TCE vehicle is composed of 31 components, of which 14 are of U.S.-origin. For purposes of this decision, we assume that the components of U.S. origin are produced in the U.S. or are substantially transformed in the U.S. and considered products of the U.S.

The U.S. assembly occurs at various stations. The assembly stations at AM General, the manufacturing subcontractor, are described as follows:

Station 0: A visual quality inspection of the glider is performed and the materials necessary for assembly are delivered to the proper stations.

Station 1: A Vehicle Identification Number is assigned. Holes are drilled into the glider and brackets are installed to support the battery pack and other electric assembly components. The fuel door of the glider is removed, assembled into a charge port, and the charge port is installed. The cab wiring harnesses and instrument clusters are removed and replaced with U.S. origin cab wiring harnesses and Hungarian instrument clusters appropriate for electric vehicles. The low-voltage battery is removed.

Station 2: A U.S.-origin battery pack, U.S. engine bay wiring harness, German power steering pump and motor, German battery coolant pump heater, and Turkish power steering lines are installed. Four subassemblies, which previously are assembled at four substations using certain U.S. and foreign components, are also assembled and installed: Cooling pack subassembly, hoses assembly, high voltage junction box assembly, and traction assembly.

The cooling pack subassembly involves the removal of the condenser from the radiator included with the glider and the replacement of the radiator included with glider with a Canadian radiator that is compatible with electric vehicles. U.S. hoses are then installed onto the radiator.

The hoses subassembly involves measuring and cutting U.S.-origin coolant hoses and installing U.S.-origin hoses clips to the hoses.

The high voltage junction box subassembly involves integrating a Canadian active discharge unit with various U.S. and foreign origin vent plugs, mounting studs, internal harnesses, fuses and a fuse holder, and various cables.

The traction subassembly involves the assembly of a U.S. origin motor controller (manufactured by Azure at a different plant and referred to as the Force Drive electric powertrain), a U.S. origin gearbox, a German electric motor, a German origin vacuum pump, a Swiss charger, a Japanese AC compressor, and a Japanese DC–DC converter.

Station 3: Multiple quality control inspections are performed. Various brackets, gaskets, nuts and bolts, and cords and wires are installed. The original-low voltage battery

is re-installed, along with the U.S. origin vehicle control unit, a German driveshaft, and a Japanese heater assembly.

Station 4: The coolant, power steering, and windshield washer reservoirs are filled. A functional electric test, a diagnostic test, and a complete system check are performed. Other various parts, including a potentiometer to the heater blend door, a data link control wiring harness, and a brake sensor to the brake petal, are installed, and a tire inflation kit, labels, books, and manuals are added to the vehicle.

Station 5: A tire pressure check, wheel alignment, headlight aiming, brake test, battery charge, road test, and underbody check are performed.

ISSUE:

What is the country of origin of the subject TCE vehicles for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations, 48 C.F.R. § 25.003, define "U.S.-made end product" as:

[A]n article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

You claim that the U.S. assembly operations, along with the value of the U.S. origin contributions (labor and components), results in a substantial transformation of the imported parts, and warrants a determination that the U.S. is the country of origin for purposes of U.S. Government procurement. You also note that "the 16 foreign components used in the assembly of the TCE vehicle cannot function alone and must be assembled with the U.S.-origin parts in order to constitute a working TCE vehicle." You cite Headquarters Ruling Letter (HRL) H022169, dated May 2, 2008, and HRL H118435; dated October 13, 2010, in support of your argument.

In HRL H118435, the U.S. was determined to be the country of origin for purposes of U.S. Government procurement for a line of electric golf and recreational vehicles. In that case, the chassis, plastic body parts, and various miscellaneous pieces of plastic trim were imported into the U.S. from China and assembled with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The vehicles were composed of approximately 53 to 62 components, of which between 12 and 17 were of U.S. origin. HRL H118435 held that none of the imported parts could function as an electric vehicle on their own and needed to be assembled with other necessary U.S. components. Additionally, it was held that given the complexity and duration of the U.S. manufacturing process, the operations were more than mere assembly. It was determined that a substantial transformation occurred, and further, the critical components to making an electric vehicle—battery pack, motor, electronics, wiring assemblies, and charger—were of U.S.-origin. The same conclusion was reached in HRL H133455, dated December 9, 2010, in which a chassis and various parts were imported from China to be combined with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The ratio of imported components to U.S.-made components varied, but the assembly process was the same.

In HRL H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly operations performed in the U.S. to produce an electric mini-truck. The decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character, and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin. The glider was assembled with approximately 87 different components, 68 of which were of U.S. origin. The batteries, charger, and gear box were of U.S. origin, and other major parts, including the electric motor and brakes, were of foreign origin.

As stated in HRL H022169 (citing HRL 731076, dated November 1, 1988), CBP considers the manufacture of an automobile more than a mere simple assembly operation. The assembly process here is complex and time-consuming and involves a significant U.S. contribution, in both parts and labor. The components used to power the vehicle are assembled together in the U.S., and then incorporated into the vehicle in the U.S. For example, the U.S.-origin battery pack, motor controller, and wiring harnesses are all critical components for the operation of the electric vehicle. Furthermore, in HRLs H118435, H133455, and H022169, it was found that the assembly of the U.S. and imported components was necessary for the vehicles to function, and that the assembly resulted in a substantial transformation. We find the same to be true in this case. The glider and other components cannot function as an electric vehicle on their own. Therefore, based on the information discussed and the rulings cited, we find that the assembly of the glider and other components of various origins constitutes a substantial transformation and results in an article with a new name, character, and use, such that the country of origin for the TCE vehicle is the U.S. for purposes of U.S. Government procurement.

HOLDING:

Based on the facts of this case, the country of origin of the TCE vehicle is the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register** as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, lany party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell
Executive Director
Office of Regulations and Rulings
Office of International Trade

[FR Doc. 2011–13384 Filed 5–27–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–17]

Notice of Proposed Information Collection: Comment Request; Congregate Housing Services Program

AGENCY: Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 1, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410; telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Carissa Janis, Office of Housing Assistance and Grants Administration, by telephone at 202–402–2487. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department is submitting 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).

The 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 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 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: Congregate Housing Services Program.

OMB Control Number: 2502–0485.

Description of the need for the information and proposed use:

- Completion of the Annual Report by grantees provides HUD with essential information about whom the grant is serving and what sort of services the beneficiaries receive using grant funds.

- The Summary Budget and the Annual Program Budget make up the budget of the grantee's annual extension request. Together the forms provide itemized expenses for anticipated program costs and a matrix of budgeted yearly costs. The budget forms show the services funded through the grant and demonstrate how matching funds, participant fees, and grant funds will be used in tandem to operate the grant program. Field staff approve the annual budget and request annual extension funds according to the budget. Field staff can also determine if grantees are meeting statutory and regulatory requirements through the evaluation of this budget.

- HUD will use the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The Grantee may similarly use the Payment Voucher to track and record their requests for payment reimbursement for grant-funded activities.

Agency Form Numbers, if applicable: HUD–90006, "Congregate Housing Services Program Annual Reporting Form", HUD–91180–A, "Summary Budget Grantee", HUD91178–A "Annual Program Budget", and HUD90198, "Line of Credit Control System (LOCCS)/Voice Response System (VRS) Congregate Housing Services Program Payment Voucher".

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 687.5. The number of respondents is 55; the number of responses is 440; the frequencies of response are quarterly, semi-annually, and annually, and the burden hour per response is 2.

Status of the proposed information collection: Reinstatement, with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 24, 2011.

Ronald Y. Spraker,

Associate General Assistant Secretary for Housing.

[FR Doc. 2011–13292 Filed 5–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5481–N–05]

Notice of Proposed Information Collection for Public Comment; Technical Assistance Experience, Expertise, and Awards Received Matrices

AGENCY: Office of the Community Planning and Development.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 1, 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: Rudene Thomas, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7233, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (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: Technical Assistance Experience, Expertise, and Awards Received Matrices. Description of the need for the information proposed: The Technical Assistance Experience, Expertise, and Awards Received Matrices will allow the Office of Special Needs Assistance Programs to accurately assess the experience, expertise, and overall capacity of applicants applying for technical assistance funding under the FY2011 McKinney-Vento Technical Assistance (MV–TA) Notice of Funding Availability (NOFA). The new format for this type of collection also makes it easier for applicants to apply by reducing the time required for filling out an application, while retaining the utility of previous collection methods.

Members of the affected public: Private for-profit, not-for-profit, and public entities applying for funding as technical assistance providers under the FY2011 MV–TA NOFA.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 10 applicants × 480 minutes per response = 4,800 total minutes or 80 hours.

Status of proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 20, 2011.

Clifford D. Taffet,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. 2011–13291 Filed 5–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX11LR000F60100]

Agency Information Collection Activities: Comment Request for the Ferrous Metals Surveys

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1028–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for the revision of the currently approved paperwork requirements for the *Ferrous Metals Surveys*. This collection consists of 17 forms. This notice provides the public and other Federal agencies an opportunity to comment on the nature of this collection which is scheduled to expire on May 31, 2011.

DATES: Please submit your comments on or before June 30, 2011.

ADDRESSES: Please submit written comments on this ICR to the OMB Office of Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *oira_docket@omb.eop.gov* or fax at 202–395–5806; and reference Information Collection 1028–0068 in the subject line. Please also submit a copy of your comments to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail); and reference Information Collection 1028–0068 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Carleen Kostick at 703–648–7940 (telephone); *ckostick@usgs.gov* (e-mail); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, Currently under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents use these forms to supply the USGS with domestic consumption data of 13 ores, concentrates, metals, and ferroalloys, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbook, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

II. Data

OMB Control Number: 1028–0068.
Form Number: Various (17 forms).
Title: Ferrous Metals Surveys.
Type of Request: Revision of a currently approved collection.
Affected Public: Private sector: U.S. nonfuel minerals producers of ferrous and related metals.
Respondent Obligation: Voluntary.
Frequency of Collection: Monthly and annually.
Estimated Number of Annual Responses: 3,201.
Annual Burden Hours: 1,660 hours. We expect to receive 3,201 annual responses. We estimate an average of 10 minutes to 1 hour per response.
Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

On February 22, 2011, we published a **Federal Register** Notice (76 FR 9810) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on April 21, 2011. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 anytime. While you can ask OMB in your comment to withhold your personal

identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Phadrea Ponds 970–226–9445.

Dated: May 23, 2011.

John H. DeYoung, Jr.,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2011–13290 Filed 5–27–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CRHPF–0511–7554; 2256–672]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Procedures for State, Tribal, and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on May 31, 2011. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before June 30, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_docket@omb.eop.gov* (e-mail). Please send a copy of your comments to John W. Renaud, Project Coordinator, Historic Preservation Grants, Heritage Assistance Programs, NPS, 1849 C St., NW. (2256), Washington, DC 20240; or via fax at (202) 371–1961; or via e-mail at *John_Renaud@nps.gov*. Please also provide a copy of your comments to Rob Gordon, Information Collection Clearance Officer, National Park Service, MS 2605, 1201 Eye Street, NW., Washington, DC 20240 (mail), or *robert_gordon@nps.gov* (e-mail). Please include 1024–0038 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Renaud by mail or e-mail (see **ADDRESSES**) or by telephone at (202) 354–2066. You may review the ICR online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0038.

Title: Procedures for State, Tribal, and Local Government Historic Preservation Programs; 36 CFR part 61.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually or on occasion.

Estimated Number of Respondents: 1,924 (59 States, territories, and the District of Columbia; 100 tribes; and 1,765 certified local governments).

Estimated Annual Nonhour Burden Cost: $340,474, primarily for photocopying, mailing, office supplies, travel expenses, *etc.*

Activity	Annual number of responses	Completion time per response (hours)	Total annual burden hours
Local Government Certification Application	55	21.40	1,177
Certified Local Government Monitoring	1,765	7.00	12,355
Certified Local Government Evaluations	441	13.33	5,879
Baseline Questionnaire for CLGs	250	.59	148
Annual Achievements Report for CLGs	900	2.20	1,980
State Inventory Maintenance	26,904	.46	12,376
State Review and Compliance Task Tracking	25,370	.17	4,313
State Program Review	14	90.00	1,260
State Cumulative Products Table	59	7.46	440
State Organization Chart and Staffing Summary	30	1.15	35
State Anticipated Activities List	30	7.47	224
State Project Notification	30	1.37	41
State Final Project Report	30	1.03	31
State Project/Activity Database Report	59	7.14	421
State Sources of Non-Federal Matching Share Report	52	4.28	223
State Unexpended Funds Carryover Table and Statement	59	.08	5
State Significant Preservation Accomplishments Summary	59	2.09	123
Annual Achievements Report for States	25	2.22	56
Tribal Historic Preservation Office (THPO) Grants Product Summary Page	100	12.00	1,200
THPO Unexpected Funds Carryover Statement	50	7.08	354
THPO Annual Report	100	17.49	1,749
Totals	56,382	.....	44,390

Abstract: This set of information collection requirements has an impact on State, tribal, and local governments that wish to participate formally in the National Historic Preservation Partnership (NHPP) Program, and State and tribal governments that wish to apply for Historic Preservation Fund (HPF) grants. The National Historic Preservation Act (16 U.S.C. 470 *et seq.*), as amended, established these programs. Implementing regulations at 36 CFR part 61 detail the processes for approval of State and tribal programs, the certification of local governments, and the monitoring and evaluation of State and certified local government programs. We developed the information collections associated with 36 CFR part 61 in consultation with

State, tribal, and local government partners.

The NPS uses the information to ensure compliance with the National Historic Preservation Act, as amended (16 USC 470 *et seq.*), as well as governmentwide grant requirements and Department of the Interior regulations at 43 CFR part 12. This information collection also produces performance data that we use to assess program effectiveness.

Comments: On March 25, 2011, we published in the **Federal Register** (76 FR 16813) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on May 24, 2011. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Rob Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–13378 Filed 5–27–11; 8:45 am]

BILLING CODE 4310–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[9921–9855–409]

Notice of Intent To Prepare an Environmental Impact Statement on a General Management Plan Amendment/Wilderness Study for Lake Clark National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), the National Park Service (NPS) is preparing an environmental impact statement for a general management plan amendment, including a wilderness study, for Lake Clark National Park and Preserve, Alaska. The environmental impact statement will be approved by the Regional Director, Alaska Region.

The general management plan amendment will establish the overall direction for both the park and preserve (referred to hereafter as the park), setting broad management goals for managing the area during the next 15 to 20 years. The plan will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park based on such factors as the park's purpose, significance, special mandates, the body of laws and policies directing park management, resource analysis, and the range of public expectations and concerns. The plan also will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the park in the future. In addition, the plan will generally address visitor-use related issues and provide management direction for the three designated wild rivers within the park. The wilderness study will evaluate portions of Lake Clark National Park and Preserve for possible designation as wilderness. The wilderness study will be included as part of the general management plan.

A range of reasonable alternatives for managing the park will be developed through this planning process and will include, at a minimum, a no-action and an NPS-preferred alternative. Major issues the plan will address include: Visitor access and use of the park; the adequacy and sustainability of existing visitor facilities and park operations; and the management of wilderness, natural and cultural resources, commercial services, and cabins. The environmental impact statement will evaluate the potential environmental impacts of the alternative management approaches and the possible designation of wilderness within the park.

All interested persons, organizations, and agencies are encouraged to submit comments and suggestions on issues and concerns that should be addressed in the general management plan amendment/wilderness study/ environmental impact statement, and the range of appropriate alternatives that should be examined.

DATES: Public scoping will begin in Spring 2011 via a newsletter to state and federal agencies; associated American Indian tribes; associated Native corporations; neighboring communities; borough commissioners; local organizations, researchers and institutions; the congressional delegation; and other interested members of the public. Public scoping meetings regarding the general management plan amendment will be held in Spring 2011 in Anchorage, Soldotna, and Homer and in the resident zone communities of Port Alsworth, Nondalton, Pedro Bay, and Newhalen. Specific dates, times, and locations will be announced in the local media, on the Internet at *http://www.nps.gov/lacl,* and will also be available by contacting the park/ preserve headquarters. In addition to attending the scoping meetings, people wishing to provide input may mail or e-mail comments to the park/preserve at the address below.

Written comments concerning the scope of the general management plan amendment/wilderness study/ environmental impact statement will be accepted for 60 days from the publication of this notice.

ADDRESSES: Comments on issues and opportunities associated with the plan may be submitted by several methods. You may comment via the Internet to *http://parkplanning.nps.gov/lacl.* You may also mail or hand-deliver comments to Lake Clark National Park and Preserve, 240 W. 5th Avenue, Suite 236, Anchorage, AK 99501. Requests to be added to the mailing list should be directed to the above address.

FOR FURTHER INFORMATION CONTACT: Joel Hard, Superintendent, Lake Clark National Park and Preserve, 240 W. 5th Avenue, Suite 236, Anchorage, AK 99501 at the address above. *Telephone:* 907–644–3626. General information about Lake Clark National Park and Preserve is available on the Internet at *http://www.nps.gov/lacl.*

SUPPLEMENTARY INFORMATION: 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.

Sue E. Masica,

Regional Director, Alaska.

[FR Doc. 2011–13242 Filed 5–27–11; 8:45 am]

BILLING CODE 4312–GY–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 Third Review]

Paper Clips From China; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Paper Clips From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On April 8, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 171, January 3, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 8, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 13, 2011 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 13, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 24, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13383 Filed 5–27–11; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioners Shara L. Aranoff and Daniel R. Pearson dissenting.

[3] The Commission has found the responses submitted by ACCO Brands USA, LLC and Officemate International Corp. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 16, 2011, a proposed Consent Decree in *United States and State of Texas* v. *Halliburton Energy Services, Inc., et al.,* Civil Action No. 4–07–CV–3795, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States, on behalf of the United States Environmental Protection Agency, and the State of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), sought, pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607 and 9613, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at three facilities located in Webster, Texas (the "Webster Site"), Odessa, Texas (the "Odessa Site"), and Houston, Texas (the "Tavenor Site"), known collectively as the "Gulf Nuclear Sites" or "Sites" as well as declaratory relief.

The United States and the State have negotiated a Consent Decree with

Defendant Pengo Industries, Inc. to resolve the CERCLA claims as well as the state law claims. The proposed Consent Decree resolves the liability of Pengo Industries, Inc. for response costs incurred or to be incurred and response actions taken in connection with the Sites. Under the Consent Decree, Settling Defendant agrees to reimburse the United States and the State a share of their response costs for the Sites with payments in the sum of $815,000 for the United States and $81,500 for the State. This Consent Decree includes a covenant not to sue by the United States and the State under Sections 106, 107 and 113 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, NW., Washington, DC 20044–7611, and should refer to *United States and State of Texas* v. *Halliburton Energy Services, Inc., et al.,* D.J. Ref. 90–11–3–07730/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, 919 Milam Street, Suite 1500, Houston, Texas 77002. The Consent Decree may also be examined at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–13280 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on May 13, 2011 a proposed Consent Decree in *United States of America* v. *BASF Corporation,* Civil Action No. 3:11–cv–00222 was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought civil penalties and injunctive relief for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* that occurred at BASF Corp.'s chemical manufacturing facility located on Copper Road in Freeport, Texas. In the Complaint, the United States alleged that BASF violated requirements of the Texas State Implementation Plan ("the Texas SIP"), permits issued pursuant to the Texas SIP, Standards of Performance for New Stationary Sources (codified at 40 CFR part 60) incorporated in the permits, and National Emission Standards for Hazardous Air Pollutants ("NESHAPs") (codified at 40 CFR part 63). The Consent Decree requires BASF to pay a civil penalty of $500,000 and imposes injunctive relief requirements on BASF related to the Oxo Alcohols Flare, the CoGeneration Unit, and Boilers B–20A and B–20C.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *BASF Corporation,* D.J. Ref. 90–5–2–1–08255/1.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.50 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–13301 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on May 18, 2011, a proposed Consent Decree ("Decree") in *United States of America, State of Texas, and State of Oklahoma* v. *Mahard Egg Farm, Inc.,* Civil Action No. 3:11–cv–01031–N, was lodged with the United States District Court for the Northern District of Texas (Dallas Division).

In this action, the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), together with the States of Texas and Oklahoma, sought penalties and injunctive relief under the Clean Water Act ("CWA") against Mahard Egg Farm, Inc., for violations of Concentrated Animal Feeding Operation ("CAFO") general permit and related laws and regulations. Specifically, the Complaint alleges that Mahard discharged pollutants or otherwise failed to comply with the terms of its permits at six other facilities, including its newest facility near Vernon, Tex., where it also failed to comply with the Texas Construction Storm Water General Permit and to ensure safe drinking water for its employees. The states of Texas and Oklahoma also alleged similar violations of state laws.

Under the proposed Consent Decree, the Defendants will pay a civil penalty and take steps to bring each of its seven CAFO facilities into compliance with applicable state and federal laws, permits, and regulations, and to restore the lands so as to prevent future discharges to area waterways. The settlement mandates the performance of specific requirements, such as proper lagoon closures, groundwater monitoring, and the construction and maintenance of buffer strips along area waterways within the facility boundaries. It also requires on-going land restoration and management measures, such as restrictions on the land-application of manure and on livestock grazing.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should

be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America, State of Texas, and State of Oklahoma* v. *Mahard Egg Farm, Inc.,* Civil Action No. No. 3:11–cv–01031–N, (N.D. Tex.), D.J. Ref. 90–5–1–1–09279.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $34 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–13281 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Air Act

Notice is hereby given that on May 18, 2011, a proposed Consent Decree, pertaining to *United States* v. *City of Wyandotte,* No. 2–11–cv–12181, was lodged with the United States District Court for the Eastern District of Michigan.

In this action, the United States seeks civil penalties and injunctive relief for violations of Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b), at a power plant owned and operated by the City, and located at 2555 Van Alstyne St., Wyandotte, Wayne County, Michigan. Specifically, the Complaint alleges that the Defendant violated the emission limits established in: (1) An operating permit issued to the Defendant by the State of Michigan pursuant to Sections 501–507 of the Clean Air Act ("CAA"), 42 U.S.C. 7661–7661f; a Prevention of Significant Deterioration permit issued to the Defendant by the State of Michigan pursuant to CAA Sections 160–169, 42 U.S.C. 7470–7479; the New Source Performance Standards established pursuant to CAA Section 111, 42 U.S.C. 7411; and the federally enforceable Michigan State Implementation Plan that was prepared and adopted pursuant to CAA Section 110, 42 U.S.C. 7411.

The proposed Consent Decree would require the City to pay a civil penalty of $112,000, perform a supplemental environmental project at an estimated cost of $210,000, and install new emission controls and implement operational practices to reduce emissions. The compliance program would consist of two phases, with the second phase being required only if the first proves insufficient.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Wyandotte,* D.J. Ref. 90–5–2–1–09346. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.25 (25 cents per page reproduction cost), for the consent decree alone, or in the amount of $13.75 (for the consent decree and its appendix) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–13352 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Versatile Onboard Traffic Embedded Roaming Sensors (Formerly Joint Venture To Perform Project Entitled Versatile Onboard Traffic Embedded Roaming Sensors)

Notice is hereby given that, on April 27, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Versatile Onboard Traffic Embedded Roaming Sensors (formerly Joint Venture to Perform Project Entitled Versatile Onboard Traffic Embedded Roaming Sensors)("VOTERS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Earth Science Systems, LLC, WheatRidge, CO, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VOTERS intends to file additional written notifications disclosing all changes in membership.

On February 10, 2009, VOTERS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 2009 (74 FR 10967).

The last notification was filed with the Department on April 5, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 7, 2010 (75 FR 25294).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–13307 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Document—Tools in Assessing Inmates' Risks & Needs: The Assessment Interview

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Jails Division is seeking applications for the development of a written guide on how to use interviews to determine inmate risks and needs within the jail environment more accurately. This document will be written in the context of inmate behavior management, which is described under **SUPPLEMENTARY INFORMATION** below.

This project will be for an 18-month period and will be carried out in conjunction with the NIC Jails Division. The awardee will work closely with NIC staff on all aspects of the project. To be considered, applicants must demonstrate, at a minimum: (1) In-depth knowledge of the purpose, functions, and operational complexities of local jails, (2) awareness of the diversity among local jails in terms of size, resources, and levels of sophistication, (3) in-depth knowledge of the six elements of inmate behavior management, as defined by NIC, and (4) ability to develop and write documents for publication.

DATES: Applications must be received by 4 p.m. EDT, Friday, June 24, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, ext. 0 for pickup. Faxed or e-mailed applications will not be accepted. Electronic applications can only be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Fran Zandi, Correctional Program Specialist, National Institute of Corrections, Jails Division. Ms. Zandi can be reached at 1–800–995–6423, ext. 71070 or by e-mail at *fzandi@bop.gov.*

SUPPLEMENTARY INFORMATION: NIC has identified six key elements in effectively managing inmate behavior in jails: (1) Assessing the risks and needs of each inmate at various points during his/her detention, (2) assigning inmates to appropriate housing, (3) meeting inmates' basic needs, (4) defining and conveying expectations for inmate behavior, (5) supervising inmates, and (6) keeping inmates productively occupied. If a jail fully and properly implements all six elements, it should experience a significant reduction in the negative inmate behaviors often experienced in jails, such as vandalism, violence, rule violations, and disrespectful behavior toward staff and other inmates. Applicants can obtain additional information on inmate behavior management by reviewing NIC's "Inmate Behavior Management: The Key to a Safe and Secure Jail." This document is available at *http://nicic.gov/Library/023882.*

The NIC Jails Division offers training and technical assistance on inmate behavior management. It has also begun to develop a series of guides on implementing each of the six elements. This document will be part of the series.

Scope of Work

Document Length: The number of pages will be determined by content. The document will include appendices and a bibliography.

Document Audience: Jail administrators are the primary audience, but the document may also be used by other management staff. This guide is intended for use by jails of all sizes. In developing the document, the awardee must consider the diversity of jails in terms of size, available resources, and level of sophistication.

Document Distribution: NIC expects to distribute the document widely. It will be available on the NIC Web site and upon request free of charge through the NIC Information Center.

Document Content: The document will be a clear and practical guide for jail administrators. It will begin with a brief overview of the six elements of inmate behavior management, drawn from NIC's "Inmate Behavior Management: The Key to a Safe and Secure Jail." This will be followed by a more detailed discussion of the first element, assessing inmates' risks and needs, including its importance in managing inmate behavior and its relationship to the other five elements. The document will then introduce the use of face-to-face interviews in determining inmates' risks and needs and explain the importance of interviewing to gaining more complete and accurate information. The document should also highlight anecdotal evidence or research that demonstrates the usefulness of interviews in risk-and-need assessment specifically and inmate behavior management generally.

Once this context is set, the document will address the following topics, at a minimum: (1) Specific interview techniques and tools, (2) the interview environment, (3) skills required of the interviewer, (4) strategies for developing staff skills in conducting interviews, with sample training tools, (5) policies, procedures, and required documentation related to interviews, with samples of each, (6) determination of reasonable standards for the interview process and its outcomes, and (7) assessment of the quality of the interview process and the achievement of outcomes, with sample assessment tools.

NIC Review: The awardee will send the following for NIC review and approval: initial framework for the document, first draft of the document, subsequent drafts based on NIC's suggested revisions, and the final draft.

Final Product: The awardee will produce a completed document that has received initial editing from a professional editor. The awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the "General Guidelines for Cooperative Agreements," which will be included in the award package. The awardee will deliver the final product to NIC in hard copy and on disk in Word format. NIC will be responsible for the final editing process and document design, but the awardee will remain available during this time to answer questions and to make revisions to the document. The awardee must also ensure that all products meet NIC's standards for accessibility and Section 508 compliance.

Meetings: The cooperative agreement awardee will attend an initial meeting with the NIC staff for a project overview and preliminary planning. This will take place shortly after the cooperative agreement is awarded and will be held in Washington, DC. The meeting will last one day.

The awardee should plan to meet with NIC staff up to four times during the course of the cooperative agreement. One meeting will be held in Washington, DC. The others may be held by WebEx or in person, depending on meeting content.

Applicant Conference

An applicant conference will be held on Friday, June 17, 2011 from 1 p.m. to 3 p.m. (EDT) by WebEx. The conference will give applicants the opportunity to meet with NIC project staff and ask questions about the project and the application procedures. Attendance at the conference is optional. Provisions will be made using WebEx technology (telephone and computer-based conferencing). The WebEx session requires applicants to have access to a telephone and computer. Applicants who plan to attend via WebEx should e-mail Fran Zandi, NIC Jails Division, Correctional Program Specialist at *fzandi@bop.gov* by 5 p.m. (EST) Monday, June 13, 2011.

Application Requirements: An application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.,* July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in this announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*).

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *http://www.grants.gov.*

The narrative portion of the application should include, at a minimum, a brief paragraph indicating the applicant's understanding of the project's purpose; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a statement or chart of measurable project milestones and timelines for the completion of each milestone; a description of the qualifications of the applicant organization; a resume for the principle and each staff member assigned to the project (including instructors) that documents relevant knowledge, skills, and abilities to carry out the project; and a budget that details all costs for the project, shows consideration for all contingencies for the project, and notes a commitment to work within the proposed budget. The narrative portion of the application should not exceed ten double-spaced typewritten pages, excluding attachments related to the credentials and relevant experience of staff.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount should not exceed $20,000.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be reviewed by a team of NIC staff. Among the criteria used to evaluate the applications are indication of a clear understanding of the project requirements; background, experience, and expertise of the proposed project staff, including any sub-contractors; effectiveness of the creative approach to the project; clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to Federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed; and indication of availability to meet with NIC staff.

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site: *http://www.ccr.gov.* Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One.

NIC Opportunity Number: 11JA05.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2011–13394 Filed 5–27–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fire Brigades

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Fire Brigades," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 30, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact the DOL Information

Management Team by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Fire Brigade Standard codified at 29 CFR 1910.156 requires each covered employer establishing a fire brigade to write an organizational statement, to ascertain the fitness of workers with specific medical conditions to participate in fire related operations, and to provide appropriate training and information to fire brigade members.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0075. The current OMB approval is scheduled to expire on June 30, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 26, 2011 (76 FR 4735).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0075. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title of Collection: Fire Brigades.

OMB Control Number: 1218–0075.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Responses: 8738.

Total Estimated Annual Burden Hours: 6292.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 24, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–13296 Filed 5–27–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Final Determination Revising the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of Final Determination.

SUMMARY: This final determination revises the list required by Executive Order No. 13126 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor"), in accordance with the "Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor." This notice adds a product, hand-woven textiles from Ethiopia, to the list that the Departments of Labor, State and Homeland Security believe might have been mined, produced, or manufactured by forced or indentured child labor. This notice also removes charcoal from Brazil from the list, as the Departments of Labor, State and Homeland Security have a reasonable basis to believe that the use of forced or indentured child labor has been significantly reduced. Under a final rule of the Federal Acquisition Regulatory Councils, published January 18, 2001, which also implements Executive Order No. 13126, federal contractors who supply products on this list are required to certify, among other things, that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the item.

DATES: This document is effective immediately upon publication of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126 (EO 13126), which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was "the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of good, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor." Pursuant to EO 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001 **Federal Register**, a list of products (the "EO List"), identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury [relevant responsibilities now within the Department of Homeland Security], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353).

Pursuant to Section 3 of EO 13126, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001, providing, amongst other requirements, that federal contractors who supply products that appear on the EO List published by the Department of Labor must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 48 CFR Subpart 22.15.

The Department also published on January 18, 2001, "Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor" (Procedural Guidelines), which provide for maintaining, reviewing, and, as appropriate, revising the EO List (66 FR 5351). The Procedural Guidelines provide that the List may be revised through consideration of submissions by individuals and on the Department's

own initiative. In either event, when proposing to revise the List, the Department of Labor must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the List. The Department will consider all public comments prior to the publication of a final determination of a revised list, which is made in consultation and cooperation with the Departments of State and Homeland Security.

On September 11, 2009, the Department of Labor published an initial determination in the **Federal Register** proposing to revise the List to include 29 products from 21 countries. The Notice requested public comments for a period of 90 days. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on July 20, 2010 that included all products proposed in the initial determination except for carpets from India. (75 FR 42164).

On December 16, 2010, in consultation and cooperation with the Departments of State and Homeland Security, the Department of Labor published an initial determination proposing to revise the EO List in the **Federal Register** (75 FR 78755). The notice explained how the initial determination was made and invited public comment through February 15, 2011. The initial determination and Procedural Guidelines can be accessed on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm* or can be obtained from: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830.

II. Summary of Significant Comments

Three public comments were received, from the Apparel Export Promotion Council of India (AEPC), the Child Labor Coalition (CLC), and the International Labor Rights Forum (ILRF). All comments are available for public viewing at *http://www.regulations.gov* (reference Docket ID No. DOL–2010–0005). In developing the revised list of products, these public comments have been carefully reviewed and considered. The AEPC submission discussed the garment and zari industries in India, while the CLC submission discussed a range of topics including the carpet industry in India, açaí berry production in Brazil, and child labor in the United States. However, none of the topics discussed in the AEPC or CLC submissions were germane to the initial determination, so only the comments from ILRF are discussed below. The comments of the AEPC and the CLC will be retained and considered in future reviews.

ILRF's comments related to the methodology and process used to remove products from the EO List, in particular, Brazilian charcoal. ILRF agreed with our initial determination that charcoal from Brazil be removed from the EO List. More broadly, ILRF agreed with our baseline benchmarks for removal of a product, including demonstrated quantitative and qualitative evidence of "virtual elimination" of forced child labor in an industry. ILRF emphasized the important role that third-party, independent monitoring and verification had played in significantly reducing forced child labor in the Brazilian charcoal industry, as well as government enforcement and public education. The Department appreciates this specific feedback on our methodology and process.

III. Revised List of Products

It has been determined appropriate to publish a revised list of products that reflects the changes proposed in the initial determination. No new information was provided through public comments to negate the proposed revisions in the initial determination. The basis for each of these revisions to the EO List is set forth in the Department of Labor's December 16, 2010, notice in the **Federal Register** (75 FR 78755).

Accordingly, based on recent, credible, and appropriately corroborated information from various sources, the Department of Labor, the Department of State, and the Department of Homeland Security have concluded that there is a reasonable basis to believe that the following product, identified by its country of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

PRODUCT

Hand-Woven Textiles

COUNTRY

Ethiopia

In addition, the Department of Labor, the Department of State, and the Department of Homeland Security have concluded that there is a reasonable basis to believe that forced or indentured child labor has been significantly reduced in the production of the following product, identified by its country of origin:

PRODUCT

Charcoal

COUNTRY

Brazil

The bibliographies providing the basis for the three agencies' decisions on each product are available on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm.*

Signed at Washington, DC, this 24th day of May 2011.

Sandra Polaski,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2011–13342 Filed 5–27–11; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications (SGA) for Cooperative Agreements Under the Disability Employment Initiative (DEI)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA–DFA–PY–10–14.

SUMMARY: The Employment and Training Administration (ETA), in coordination with Department of Labor's (DOL's) Office of Disability Employment Policy (ODEP) announces the availability of approximately $20 million for a second round of cooperative agreements to state agencies that administer the Workforce Investment Act (WIA). These funds provide an opportunity for states to develop and implement a plan for improving effective and meaningful participation of persons with disabilities in the workforce.

DOL is using this funding to implement the Disability Employment Initiative (DEI), through which the Department intends to make six to ten grant awards designed to:

(1) Improve educational, training, and employment opportunities and outcomes of youth and adults with disabilities who are unemployed, underemployed, and/or receiving Social Security disability benefits; and

(2) Help these individuals with disabilities find a path into the middle class through exemplary and model service delivery by the public workforce system.

DOL will award DEI grants for a three-year period of performance. The complete SGA and any subsequent SGA amendments are described in further detail on ETA's Web site at *http://*

www.doleta.gov/grants or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Serena Boyd, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210; *telephone:* 202–693–3338.

Signed at Washington, DC, this 24th day of May, 2011.

B. Jai Johnson,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–13327 Filed 5–27–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: The meeting will be held on June 13, 2011 from 10 a.m. to 11:30 a.m.

ADDRESSES: Capitol Visitor Center, Congressional Meeting Room North.

SUPPLEMENTARY INFORMATION:

Agenda

(1) Chair's opening remarks—Secretary of the Senate.

(2) Recognition of Co-chair—Clerk of the House.

(3) Recognition of the Archivist of the United States.

(4) Approval of the minutes of the last meeting.

(5) Discussion of on-going projects and activities.

(6) Annual Report of the Center for Legislative Archives.

(7) Other current issues and new business.

The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 357–5350.

Dated: May 25, 2011.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2011–13402 Filed 5–27–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Proposed Information Collection Requests: Sustaining Digitized Special Collections and Archives Survey

AGENCY: Institute of Museum and Library Services.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning a proposed survey to gather information on the practices of creating and maintaining sustainable digitized special collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 25, 2011.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Chuck Thomas, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: 202–653–4663. E-mail: *cthomas@imls.gov* or by or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background:

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS conducts policy research, analysis, and data collection to extend and improve the Nation's museum, library, and information services. The policy research, analysis, and data collection is used to: identify national needs for and trends in museum, library, and information services; measure and report on the impact and effectiveness of museum, library, and information services throughout the United States; identify best practices; and develop plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

II. Current Actions

Over the past decade, libraries, archives, museums, foundations and government agencies, and others have invested millions in the digitization of historical and rare content for research, education, cultural heritage. Grants have facilitated major digitization efforts, developed significant new collections, and paved the way for exciting new forms of research and teaching, possible only in an online environment. As budgets tighten and the real costs of ongoing support for digital projects become clear, however, libraries, archives, and museums are discovering

that the work associated with digitization projects rarely concludes when the last scanned file is posted to a public site. The maintenance of digital projects requires an ongoing investment of both financial and human resources; not only must servers be supported and user queries answered, but rapid advances in technology are changing user expectations about how they want to discover, interact with, and share digital content. These changes are creating complicated new challenges for libraries, archives, and other institutions that wish to digitize and make available their local special and archival collections.

The project will consist of two parts: first, a survey asking representatives from a range of institutions to document existing practices and attitudes toward sustaining digitized special collections, and second, a series of case studies on innovative models for managing and sustaining digitized special collections (to be released in Spring 2012). This study will promote the spread of knowledge about library and museum experiments and initiatives to support digital projects, enabling both the leaders of current and future digital projects to develop more robust sustainability plans and also the funders and institutional administrators who support these projects to understand the factors and variables that help point towards success. This survey will attempt to gather data from a broad and representative range of cultural heritage organizations across the United States.

This survey is intended for libraries, archives, museums, and other cultural heritage organizations that have digitized some portion of their special collections or have arranged to have their special collections digitized by a third party. Please do not hesitate to contact the authors of the survey (see contact information below) if you are unsure whether the survey applies to your organization.

The survey is being distributed to leaders of libraries or other institutions that are: Recipients of IMLS funds for digitization projects from 1997 to the present, (through National Leadership Grants or via other routes such as LSTA funding) or Members of the Association of Research Libraries.

Agency: Institute of Museum and Library Services.

Title: Sustaining Digitized Special Collections and Archives Survey.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: One-time survey.

Affected Public: Libraries, archives, museums, and other cultural heritage organizations.

Number of Respondents: To be determined.

Estimated Time per Respondent: To be determined.

Total Annualized Capital/Startup Costs: To be determined.

Total Costs: To be determined.

FOR FURTHER INFORMATION CONTACT: Chuck Thomas, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: 202–653–4663. E-mail: *cthomas@imls.gov* or by or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

Dated: May 25, 2011.

Kim Miller,

Management Analyst.

[FR Doc. 2011–13417 Filed 5–27–11; 8:45 am]

BILLING CODE 7036–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: IMLS Digital Collections and Content: An Assessment of Opening History

AGENCY: Institute of Museum and Library Services, The National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request, with applicable supporting documentation, may be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 27, 2011.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Chuck Thomas, Senior Program Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: 202–653–4663. E-mail: *cthomas@imls.gov* or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS conducts policy research, analysis, and data collection to extend and improve the Nation's museum, library, and information services. The policy research, analysis, and data collection is used to: Identify national needs for and trends in museum, library, and information services; measure and report on the impact and effectiveness of museum, library, and information services throughout the United States; identify best practices; and develop plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

Abstract: This national survey of reference service providers in public and academic libraries is intended to help the IMLS Digital Collections and Content (DCC) project evaluate the Opening History resource. Opening History is a publicly available registry and repository of digital cultural heritage collections, expanded from a strong base of collections digitized through IMLS support. Approximately

1,000 cultural heritage institutions contribute to Opening History, including about 500 libraries and 130 museums. This data collection will survey reference service providers about the perceptions of Opening History, its quality and scope, and effectiveness in meeting needs of their local user communities. This collection is necessary to achieve a thorough understanding of how Opening History is used by its target audience and to determine the most effective use of IMLS resources with respect to future development of Opening History and the IMLS DCC.

Current Actions: This notice proposes clearance of the IMLS Digital Collections and Content: An Assessment of Opening History. The 60-day notice for the IMLS Digital Collections and Content: Opening History of Evaluation was published in the **Federal Register** on May 11, 2010, (FR vol. 75, No. 90, pg. 26283). No comments were received.

Agency: Institute of Museum and Library Services.

Title: IMLS Digital Collections and Content: An Assessment of Opening History.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: One-time survey of no more than 613 reference-service providers.

Affected Public: General public, libraries, museums.

Number of Respondents: 613.

Burden hours per respondent: .3/hr.

Total burden hours: 183.9.

Total Annualized Capital/Startup Costs: $23,922.

Total Costs: $4,921.16.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: May 26, 2011.

Kim A. Miller,

Management Analyst, Institute of Museum & Library Services.

[FR Doc. 2011–13481 Filed 5–27–11; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0034]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on February 18, 2011.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 64, "Travel Voucher" (Part 1); NRC Form 64A, "Travel Voucher" (Part 2); and NRC Form 64B, "Optional Travel Voucher" (Part 2).

3. *Current OMB approval number:* 3150–0192.

4. *The form number if applicable:* NRC Forms 64, 64A, 64B.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

7. *An estimate of the number of annual responses:* 100.

8. *The estimated number of annual respondents:* 100.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100 (1 hour per form).

10. *Abstract:* Consultants, contractors, and those invited by the NRC to travel (*e.g.,* prospective employees) must file travel vouchers and trip reports in order to be reimbursed for their travel expenses. The information collected includes the name, address, social security number, and the amount to be reimbursed. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 30, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0034), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine_J._Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 24th day of May, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–13304 Filed 5–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0117]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Addresses: Please include Docket ID NRC–2011–0117 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search

for documents filed under Docket ID NRC–2011–0117. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0117.

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 5, 2011 to May 18, 2011. The last biweekly notice was published on May 17, 2011 (76 FR 28470).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. NRC regulations are available online in the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-

class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

For further details with respect to this license amendment application, see the application for amendment, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 8, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force Traveler (TSTF) Improved Standard Technical Specification Change Traveler TSTF–514, "Revise BWR Operability Requirements and Actions for RCS Leakage Instrumentation." The availability of this TS improvement was announced in the **Federal Register** on December 17, 2010 (75 FR 79048) as part of the consolidated line item improvement process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the primary containment atmospheric gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David G. Pettinari, DTE Energy Senior Corporate Attorney—Regulatory, 688 WCB, DTE Energy, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Robert J. Pascarelli.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: March 3, 2011.

Description of amendment request: The proposed changes are administrative in nature and would delete or modify existing license conditions that have been completed or are otherwise no longer in effect. Approval of the proposed changes to the Operating License would support the Columbia license renewal effort.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment deletes license conditions which are completed or are otherwise obsolete. As such, the changes are strictly administrative in nature. The changes do not affect the manner by which the facility is operated and do not change any facility

design feature, structure, system, or component. The proposed changes do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment deletes license conditions which are completed or are otherwise obsolete. As such, the changes are strictly administrative in nature. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to the Operating License is administrative in nature and has no impact on the margin of safety. The changes do not affect any plant safety parameters or setpoints. The license conditions have been satisfied as required.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, *Esq.,* Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: April 11, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification (STS) Change Traveler TSTF–514, "Revise BWR [Boiling-Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation." The availability of this TS improvement was announced in the **Federal Register** on December 17, 2010 (75 FR 79048), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated. Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, *Esq.,* Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

FirstEnergy Nuclear Operating Company (FENOC, the licensee), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1 (PNPP), Lake County, Ohio

Date of amendment request: April 12, 2011.

Description of amendment request: The proposed amendment would revise the PNPP Technical Specifications (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. The changes are consistent with U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) change traveler TSTF–514, Revision 3, "Revise [Pressurized Water Reactor] PWR Operability and Actions for RCS Leakage Instrumentation."

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The monitoring of RCS leakage is

not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involved a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Robert D. Carlson.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: March 11, 2011.

Description of amendment request: The amendments would revise the technical specifications (TSs) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status and to establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for Leak-Before-Break progressing to pipe rupture remains extremely low.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the containment atmosphere gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Douglas A. Broaddus.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: February 21, 2011.

Description of amendment request: The proposed amendments would relocate selected figures and values from the Technical Specifications (TSs) to the Core Operating Limits Report (COLR) including TS Figure 2.1–1 cited in TS 2.1.1, selected portions of Note 1 on Overtemperature Delta Temperature and Note 3 on Overpower Delta Temperature in cited TS Table 2.2–1, TS Figure 3.1–1 cited in TS 3/4.1.1.1, Shutdown Margin value cited in TS 3/4.1.1.2, Moderator Temperature Coefficient values cited in TS 3/4.1.1.3, and Departure from Nucleate Boiling values cited in TS 3.2.5. The description of the COLR in TS 6.9.1.7 is also revised to reflect these proposed changes. The affected TS figures and technical limits cited above are only being relocated to the COLR and are not being changed under this license amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to relocate cycle-specific parameters from TS to the COLR are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facilities or the manner in which the units are operated. The proposed changes do not alter or prevent the

ability of structures, systems or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the PTN [Turkey Point Plant] Updated Final Safety Report (UFSAR).

The subject parameter limits will continue to be administratively controlled in accordance with Technical Specification 6.9.1.7. Specifically, this TS requires the COLR to be submitted to the NRC each reload cycle, including any mid-cycle revisions or supplements.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the design assumptions, conditions, or configurations of the facilities or the manner in which the units are operated. The proposed changes have no adverse impact on component or system interactions. The proposed changes will not degrade the ability of systems, structures or components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the PTN UFSAR. The proposed changes are administrative in nature and do not change the level of programmatic and procedural details that assure safe operation of the facilities.

Since there are no changes to the design assumptions, parameters, conditions and configuration of the facilities, or the manner in which the plants are operated and surveilled, the proposed amendment does not create the possibility of a new or different accident from any previously analyzed.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

There is no adverse impact on equipment design or operation and there are no changes being made to Technical Specification cycle-specific parameter limits themselves that would adversely affect plant safety. The proposed changes are administrative in nature and impose alternative procedural and programmatic controls on these parameter limits in accordance with the Commission's position established by Generic Letter 88–16 (Reference 1). Any needed changes to these limits will continue to be submitted to the NRC in accordance with TS 6.9.1.7 requirements.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on the above discussion, FPL has determined that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Douglas A. Broaddus.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 29, 2010.

Description of amendment request: The proposed change would delete the Seabrook Technical Specification (TS) 3.4.10, "Structural Integrity," while relocating the requirements of Surveillance Requirement 4.4.10 to TS 6.7.6.m.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed change neither adversely affects accident initiators or precursors, nor alters design assumptions. The proposed change does not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits.

The proposed change removes from the Technical Specifications the requirements associated with structural integrity. Removing these requirements will have no adverse effect on plant operation, the availability or operation of any accident mitigation equipment, or plant response to a design basis accident. The change has no impact on the ability of [American Society of Mechanical Engineers (ASME)] Code Class 1, 2, and 3 components to perform their safety functions since these components remain under the control of [Title 10 of the *Code of Federal Regulations,* Section 50.55a].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not impact the accident analysis. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a significant change in the method of plant operation, or new operator actions. The proposed change will not introduce failure modes that could result in a new accident. The change does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change does not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold K. Chernoff.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: March 28, 2011.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.8.1, "AC [Alternating Current] Sources—Operating," to incorporate Technical Specification Task Force (TSTF) Change Traveler TSTF–163, Revision 2, "Minimum vs. Steady State Voltage and Frequency," dated April 22, 1998. The proposed changes would also revise the Final Safety Analysis Report Update to identify an exception to NRC Safety Guide 9, "Selection of Diesel Generator Set Capacity for Standby Power Supplies," dated March 10, 1971.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the acceptance criteria to be applied to an existing Technical Specification (TS) surveillance test of the facility diesel generators (DGs). The proposed changes also revise the Final Safety Analysis Report (FSAR) Update to identify an exception to Regulatory Guide (RG) 1.9, Revision 0, for DG frequency recovery time following loading. The performing of a surveillance test or identification of RG 1.9 exceptions is not an accident initiator and does not increase the probability of an accident occurring. The proposed new surveillance acceptance criteria will continue to assure that the DGs are capable of carrying the peak electrical loading assumed in the various existing safety analyses, which take credit for the operation of the DGs. The proposed RG 1.9 exception does not adversely impact the ability of the DGs to perform their safety function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the test acceptance criteria for a specific performance test conducted on the existing DGs and specify a RG 1.9 exception. The proposed change does not involve installation of new equipment or modification of existing equipment, so no new equipment failure modes are introduced. The proposed revision to the DG surveillance test acceptance criteria and the RG 1.9 exception are not a change to the way that the equipment or facility is operated and no new accident initiators are created.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The conduct of performance tests on safety-related plant equipment is a means of assuring that the equipment is capable of maintaining the margin of safety established in the safety analyses for the facility. With the proposed change in the DG TS surveillance test acceptance criteria, the DG will continue to [be] tested in a manner that assures it will perform as assumed in the existing safety analyses. The proposed RG 1.9 exception does not adversely impact the ability of the DGs to perform their safety function and does not impact the safety analyses for the facility.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, *Esq.,* Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 8, 2011.

Description of amendment request: The proposed changes revise and add a new Condition C to Technical Specification (TS) 3.4.6, "RCS [Reactor Coolant System] Leakage Detection Instrumentation" and revise the associated bases. New Condition C is applicable when the primary containment atmosphere gaseous radiation monitor is the only operable TS-required instrument monitoring RCS leakage, *i.e.,* TS-required particulate and sump monitors are inoperable. New Condition C Required Actions require monitoring RCS leakage by obtaining and analyzing grab samples of the primary containment atmosphere every 12 hours, monitoring RCS leakage using administrative means every 12 hours, and taking action to restore monitoring capability using another monitor within 7 days. Additionally, minor editorial revisions are proposed to ensure continuity of the TS format. These changes are the result of new Condition C and consist of re-lettering existing Conditions C and D as Conditions D and E, respectively.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** (FR) on April 13, 2010 (75 FR 18907–18908), based on TS Task Force (TSTF)–514, Revision 1, on possible amendments to revise the plant-specific TS, to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status, establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable, and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation, including a model safety evaluation (SE) and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models, electronically under ADAMS Accession Number ML102300729, for referencing in license amendment applications in the FR on December 17, 2010 (75 FR 79048). The FR notice of availability also stated that the NRC staff disposition of comments received on the Notice of Opportunity for Comment announced in the FR on April 13, 2010 (75 FR 18907–18908), on TSTF–514, Revision 1 is available electronically under ADAMS Accession Number ML102300727. The differences between the revisions did not cause any changes to the NRC staff SE. As such the comments received on Revision 1 are equally applicable to Revision 3. The licensee affirmed the applicability of the model NSHC determination in its application dated April 8, 2011.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated. Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the primary containment atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate, with only the primary containment atmospheric gaseous radiation monitor operable, increases the margin of safety by limiting continued plant operation during the timeframe of reduced monitoring capabilities. Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Nancy L. Salgado.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: April 27, 2011.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. These changes are consistent with Technical Specification Task Force traveler TSTF–513, Revision 3, "Revise PWR [pressurized water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation." The availability of this TS improvement was announced in the **Federal Register** on January 3, 2011 (76 FR 189) as part of the consolidated line-item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation presently installed in the plant and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. Monitoring for RCS leakage does not contribute to the probability of an accident, Furthermore, the monitoring of RCS leakage is not a precursor to any accident previously evaluated. Monitoring RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for Leak-Before-Break progressing to pipe rupture remains extremely low. Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the containment atmosphere gaseous radiation monitor operable has a positive impact on the margin of safety by limiting the time of plant operation in this configuration, which increases the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: September 30, 2010.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to support a transition to GE14 fuel in the Columbia Generating Station reactor core. Specifically, the changes raised the required average boron concentration in the SLC delivered to the reactor core from 660 parts per million (ppm) natural boron to a concentration equivalent to 780 ppm natural boron. The licensee will accomplish this by using sodium pentaborate solution enriched with the Boron-10 (B–10) isotope. As a result, the amendment added a new TS Surveillance Requirement 3.1.7.9 to verify sodium pentaborate enrichment is ≥ 44.0 atom percent B–10 prior to addition to the SLC tank. The associated TS Bases will be updated under TS 5.5.10, "Technical Specification (TS) Bases Control Program," to reflect the increase in the SLC Boron-10 enrichment.

Date of issuance: May 18, 2011.

Effective date: As of its date of issuance and shall be implemented during the spring 2011 refueling outage.

Amendment No.: 221.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 14, 2010 (75 FR 77912).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: June 30, 2010, as supplemented by letter dated December 15, 2010.

Brief description of amendment: The amendments change the High Pressure Coolant Injection (HPCI) Equipment Room Delta Temperature High Trip Setpoint and Allowable Value listed in Technical Specification Table 3.3.2–2, Isolation Actuation Instrumentation Setpoints, Item 4e. The changes were proposed as a result of a revised licensee analysis which indicated that the setpoints needed to be lowered to provide an isolation signal for the HPCI steam supply lines, appropriate for all postulated conditions, in the event of a 25 gallon-per-minute HPCI steam line leak.

Date of issuance: May 11, 2011.

Effective date: As of the date of issuance, and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–202; Unit 2–164.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the licenses and the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 24, 2010 (75 FR 52041).

The supplement dated December 15, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1, Goodhue County, Minnesota

Date of application for amendment: February 3, 2011, as supplemented by letter dated March 15, 2011.

Brief description of amendment: This amendment revises the Facility Operating License and the Technical Specification 3.8.1, "AC Sources—Operating", Surveillance Requirement 3.8.1.10 footnote requiring battery charger modifications.

Date of issuance: April 29, 2011.

Effective date: As of the date of issuance and shall be implemented within 15 days.

Amendment No.: 200.

Facility Operating License No. DPR–42: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 22, 2011 (76 FR 9827).

The supplemental letter contained clarifying information and did not change this initial no significant hazard consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: June 14, 2010.

Brief description of amendments: These amendments revise the Technical Specifications to allow the use of a dedicated on-line core power distribution monitoring system, the Westinghouse Best Estimate Analyzer for Core Operation—Nuclear (BEACON™).

Date of issuance: May 4, 2011.

Effective date: As of the date of issuance and shall be implemented prior to December 31, 2011.

Amendment Nos.: 201/188.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 21, 2010 (75 FR 57527).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 4, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 17, 2010, as supplemented by letters dated February 8 and April 27, 2011.

Brief description of amendment: The amendment revised the minimum critical power ratio safety limits in Technical Specification 2.1.1.2 from ≥ 1.10 to ≥ 1.15 for two recirculation loop operation, and from ≥ 1.12 to ≥ 1.15 for single recirculation loop operation.

Date of issuance: May 4, 2011.

Effective date: As of the date of issuance and shall be implemented before startup from the Spring 2011 refueling outage.

Amendment No.: 165.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 2, 2010 (75 FR 67403)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of May 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–13211 Filed 5–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0120]

Notice of Issuance of Bulletin 2011–01, Mitigating Strategies

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Bulletin 2011–01 to all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel. The NRC has issued this Bulletin to obtain a comprehensive verification of compliance with the regulatory requirements regarding the conditions of licenses.

DATES: The Bulletin was issued on May 11, 2011.

ADDRESSES: *NRC Bulletin 2011–01:* "Mitigating Strategies" is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number: ML111250360.

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Bowman, Senior Project Manager, Generic Communications and Power Uprate Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission. *Telephone:* 301–415–2963; *e-mail: Eric.Bowman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The NRC Has Issued This Bulletin for Three Purposes

1. To require that addressees provide a comprehensive verification of their compliance with the regulatory requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.54(hh)(2),

2. To notify addressees about the NRC staff's need for information associated with licensee mitigating strategies under 10 CFR 50.54(hh)(2) in light of the recent events at Japan's Fukushima Daiichi facility in order to determine if (1) Additional assessment of program implementation is needed, (2) the current inspection program should be enhanced, or (3) further regulatory action is warranted, and

3. To require that addressees provide a written response to the NRC in accordance with 10 CFR 50.54(f).

Dated at Rockville, Maryland, this 24th day of May 2011.

For the Nuclear Regulatory Commission.

Stacey Rosenberg,

Chief, Generic Communications and Power Uprate Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–13355 Filed 5–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754; NRC–2011–0033]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for ABB, Inc., Windsor, CT

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: John Nicholson, Project Manager, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, Pennsylvania, 19406. *Telephone:* 610–337–5236; *fax number:* 610–337–5269; *e-mail: John.Nicholson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a license amendment to Material License No. 06–00217–06 issued to ABB, Inc. (ABB or, "the licensee"), to authorize a revision to the previously approved (June 1, 2004) Decommissioning Plan (DP) for its CE Windsor Site (Facility) located at 2000 Day Hill Road, Windsor, Connecticut. The NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

Identification of Proposed Action

The purpose of the proposed amendment is to approve a revision, Decommissioning Plan Revision (DP) 2, to the previously approved site DP for the licensee's facility. The original DP was approved on June 1, 2004, and revision 1 was approved on July 8, 2009. Specifically, this Revision 2 to the approved DP expands the scope of the DP and provides the radiological status and remediation plans for select Formerly Utilized Sites Remedial Action Program (FUSRAP) areas, including the Site Brook and the adjacent Debris Pile. In addition, site-specific derived concentration guideline limits (DCGLs) for thorium-232 (Th-232) and radium-226 (Ra-226) are provided in the revised DP. Small quantities of Th-232 and Ra-226 were identified during investigational sampling of the Burning Grounds area, and DCGLs have been developed and submitted for approval as an addendum to the DP, Revision 2 (Derivation of the Site-Specific Soil DCGLs Addendum Soil DCGLs for Thorium and Radium). The revised DP does not change any previously approved remediation activities or DCGLs for uranium or cobalt-60 (Co-60) at the site. On February 26, 2010, and as supplemented on August 6, 2010, ABB, Inc. requested that NRC approve the proposed amendment. The licensee's request for the proposed change, including an opportunity to request a hearing or provide comments, was previously noticed in the **Federal Register** on February 15, 2011 (76FR8785).

The staff has prepared the EA in support of the proposed license amendment. The proposed actions will allow the licensee to continue to remediate the remainder of the site for eventual unrestricted use pending final status survey results. The licensee has obtained the proper permits from the State of Connecticut Department of Environmental Protection for the planned remediation activities

impacting the Site Brook. The DCGLs established in the DP Revision 2 for Ra-226 and Th-232 do not exceed the trigger levels requiring consultation with the U.S. Environmental Protection Agency (EPA) under the Memorandum of Understanding between the EPA and the NRC.

Need for the Proposed Action

The proposed action would allow ABB to complete the remaining Facility remediation and decommissioning activities, thereby reducing residual radioactivity at the Facility to a level that permits release of the entire property for unrestricted use and termination of the license. The licensee has been successfully remediating and decommissioning the Facility since 2004 under the previously-approved DP. In order to complete remediation of the entire Facility, the FUSRAP areas must be remediated. NRC is fulfilling its responsibilities under the Atomic Energy Act of 1954, as amended, to make a decision on a proposed license amendment for decommissioning that ensures safety and protection of the public and the environment.

Environmental Impacts of the Proposed Action

In preparing this EA, the NRC staff reviewed the 2004 EA issued in connection with the initial DP; the 2009 EA issued in conjunction with the DP Revision 1; the licensee's Environmental Report submitted on February 28, 2010; and the revised DP submitted in February 2010 and supplemented in August 2010. Additionally, the staff has continuously reviewed the performance of the decommissioning activities conducted by the licensee and their contractors through periodic inspections. The staff concluded that the bases for the findings of the 2004 and 2009 EAs remain valid, and are applicable to the revised DP. Regarding remediation of the FUSRAP areas, decommissioning methodologies are unchanged from the initial approved DP and remain appropriate for the contaminant concentrations found in the FUSRAP area soils. The same isotopes that were present in the Facility's non-FUSRAP areas (namely, those associated with enriched uranium and cobalt-60) exist in the FUSRAP areas as well. The FUSRAP areas requiring remediation are similar to those already successfully remediated and decommissioned at the Facility. The amount of waste in FUSRAP areas that will need to be packaged and shipped to a licensed disposal facility is similar to the amounts evaluated in the 2004 and 2009 EAs, and this waste will be packaged and transported to the same disposal facility previously used for non-FUSRAP area remediation activities.

The revised DP includes new site-specific soil DCGLs for Ra-226 and Th-232, to support the unrestricted release of the impacted areas of the Burning Grounds. The staff's technical review confirmed that the licensee's requested site specific Ra-226 and Th-232 soil DCGLs of 4.5 and 4.0 picocuries/gram, respectively, would result in a maximum annual dose of less than 19 millirem of total effective dose equivalent, considering a resident farmer scenario and using the RESRAD 6.4 computer code to model the input parameters of the scenario and compute the dose to an individual. Because this dose is less than 25 millrem per year, use of these DCGLs will meet the radiological criteria for unrestricted release specified in 10 CFR 20.1402. The conclusions of the 2004 and 2009 EAs thus remain valid for the proposed action.

In summary, NRC staff has reviewed the revised decommissioning plan for the Facility, and examined the impact of the proposed additional decommissioning activities. Based upon its review, the staff has determined that environmental impacts associated with the proposed action are not greater than the impacts found in the 2004 and 2009 EAs, and are bounded by the impacts discussed in NUREG–1496, "A Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities," Volumes 1–3. The staff finds that there have been no significant environmental impacts to date from the use and cleanup of radioactive material at the Facility. The NRC staff reviewed the docket file records to identify any non-radiological hazards that may impact the environment surrounding the Facility, and no such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The staff has considered the impact of the proposed FUSRAP area remediation at the Facility, and finds that the proposed action will not have a significant impact on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

The Facility is in the process of being decommissioned under an approved DP. Although the U.S. Army Corps of Engineers (USACE) has responsibility for coordinating the radiological clean up in the FUSRAP areas, ABB entered into a formal agreement with the USACE and the NRC to conduct the clean up due to extensive comingling of FUSRAP and NRC licensed materials from past commercial operations in order to facilitate the efficient and effective decommissioning and clean up of the Facility. Therefore, the only alternative to the proposed action to continue the decommissioning process at the Facility is no action. The no-action alternative is not acceptable because it is inconsistent with NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease and to request termination of their radioactive materials license. Although termination of the NRC and USACE agreement would result in unnecessary remediation and decommissioning delay, the environmental impacts created by the action would be unchanged. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is, accordingly, not considered further.

Conclusion

The NRC staff reviewed the environmental impacts of the proposed action in accordance with the requirements of 10 CFR 51 and NRC's unrestricted release criteria specified in 10 CFR 20.1402. The NRC staff has determined that incorporating the Facility's remaining FUSRAP areas into the site-wide DP would not significantly affect the quality of the human environment, and a FONSI is appropriate. Therefore, an environmental impact statement is not warranted for the proposed action, and pursuant to 10 CFR 51.32.

Agencies and Persons Consulted

This EA was prepared by NRC staff and coordinated with the following agencies: Connecticut Department of Environmental Protection and the U.S. Fish and Wildlife Services. NRC provided a draft of this EA to the Connecticut Department of Environmental Protection for review on April 29, 2011. On May 16, 2011, Michael Firsick of the Connecticut Department of Environmental Protection responded by e-mail. The State agreed with the conclusions of the EA.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant

environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically through the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents.

The ADAMS accession numbers for the documents related to this notice are:

Document	PDR	Web	ADAMS	NRC staff
ABB, Inc. Decommissioning Plan, Revision 2, CE Windsor Site (Previously Identified FUSRAP Areas Including Debris Piles & Site Brook). August 2010.	X	X	ML102310473	X
ABB, Inc. Decommissioning Plan, Revision 2, CE Windsor Site—Figures. August 2010.	X	X	ML102310512	X
ABB, Inc. Decommissioning Plan, Revision 2, CE Windsor Site—Tables. August 2010.	X	X	ML102310479	X
ABB, Inc. Decommissioning Plan, Revision 2, CE Windsor Site—Appendix A: RESRAD Reports—Resident Farmer Thorium and Radium. August 2010.	X	X	ML102310548	X
ABB, Inc. Decommissioning Plan, Revision 2, CE Windsor Site—Appendix B: Probabilistic Evaluation Graphical Summary. August 2010.	X	X	ML102310553	X
ABB, Inc. Derivation of the Site Specific Soil DCGLs, Addendum, Soil DCGLs for thorium and radium. August 2010.	X	X	ML102310539	X
Memorandum of Understanding Between the Environmental Protection Agency and the Nuclear Regulatory Commission, Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites. October 2002.	X	X	ML022830208	X
Letter to U.S. Army Corps of Engineers from U.S. Nuclear Regulatory Commission on Proposed Process to Decommission and Clean Up the ABB Windsor Site. August 15, 2007.	X	X	ML072210979	X

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 18th day of May 2011.

For the Nuclear Regulatory Commission.

Judith A. Joustra,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2011–13362 Filed 5–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0119]

Office Of New Reactors; Proposed Revision 4 to Standard Review Plan; Section 8.1 on Electric Power—Introduction

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," on a proposed Revision 4 to Standard Review Plan (SRP), Section 8.1 on "Electric Power—Introduction," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111180542). The previous version of this SRP section was published in March, 2007 as proposed Revision 3 (ADAMS Accession No. ML070550067). The current revision issues a new Branch Technical Position (BTP) 8–8 on "Onsite (Emergency Diesel Generators) and Offsite Power Sources Allowed Outage Time Extensions." (ADAMS Accession No. ML111180521). The new BTP will be added to Chapter 8 of the SRP and Table 8–1 is updated to include the BTP 8–8.

The NRC staff issues notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications and review of design certification and combined license applications for NRO. The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG–0800, SRP Section 8.1, Revision 4 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

DATES: Comments must be filed no later than June 30, 2011. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0119 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0119. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of

Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* 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 reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resources@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section 8.1, Revision 4 and the BTP 8–8. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Section 8.1, Revision 4 and BTP 8–8.

Dated at Rockville, Maryland, this 19th day of May 2011.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactor.

[FR Doc. 2011–13358 Filed 5–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0287]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 8.2, Revision 1, "Administrative Practices in Radiation Surveys and Monitoring."

FOR FURTHER INFORMATION CONTACT: Harriet Karagiannis, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7477 or e-mail *Harriet.Karagiannis@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Proposed revision 1 of Regulatory Guide 8.2, "Administrative Practices in Radiation Surveys and Monitoring," was issued with a temporary identification as Draft Regulatory Guide, DG–8035 on August 30, 2010 (75 FR 52996). This guidance sets forth the NRC staff's views of acceptable administrative practices associated with surveys and monitoring of radiation arising from NRC licensed activities. This guidance is intended primarily for NRC licensee administrative and management personnel that are involved in, or are planning to initiate, activities involving the handling of radioactive materials or exposure to radiation.

The administrative requirements for surveys and monitoring of radiation are specified in Title 10, of the *Code of Federal Regulations*, part 20, "Standards for Protection against Radiation" (10 CFR part 20), and are applicable to all NRC-licensed activities. Part 20 requires surveys in order to evaluate the significance of radiation levels that may be present. In addition, part 20 requires radiation monitoring in order to obtain measurements for the evaluation of potential exposures and doses.

II. Further Information

On August 30, 2010, DG–8035 was published with a request for public comments (75 FR 52996). The public comment period closed on October 29, 2010. Electronic copies of Regulatory Guide 8.2, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/and* through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under ADAMS Accession No. ML110460093. The regulatory analysis may be found in ADAMS under Accession No. ML110460099. Staff's responses to public comments on DG–8035 are available under ML110460108.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resources@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 17th day of May, 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–13359 Filed 5–27–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice—June 16, 2011 Public Hearing

TIME AND DATE: 2 p.m., Thursday, June 16,

2011.

PLACE:

Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES:

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, June 10, 2011. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, June 10, 2011. Such statement must be typewritten, double-

spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the June 23, 2011 Board meeting will be posted on OPIC's Web site on or about Friday, June 3, 2011.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via e-mail at *connie.downs@opic.gov.*

Dated: May 26, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–13507 Filed 5–26–11; 4:15 pm]

BILLING CODE 3210–01–P

PEACE CORPS

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Peace Corps.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Peace Corps has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery " to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted on or before June 30, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via *e-mail to: oira_submission@omb.eop.gov* or *fax to:* 202–395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@peacecorps.gov*. Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Peace Corps received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide Peace Corps projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 10.

Annual Number of Respondents: 8,226.

Annual Responses: 8,226.

Frequency of Response: Once per request.

Average Minutes per Response: 49.

Annual Burden Hours: 5,039.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

This notice is issued in Washington, DC on May 23, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–13350 Filed 5–27–11; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 2, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 2, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 26, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13530 Filed 5–26–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64539; File No. SR–Phlx–2011–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Market Access Provider Fee

May 24, 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 May 17, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to eliminate the Market Access Provider Subsidy in Section VII of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate Section VII, entitled "Market Access Provider Subsidy" from the Fee Schedule. The Market Access Provider Subsidy is a per contract fee payable by the Exchange to Eligible Market Access Providers [3] for Eligible Contracts [4] submitted by MAPs for execution on the Exchange. The Exchange does not desire to incentivize MAPs going forward by offering a subsidy.

In 2007, the Exchange began to offer MAPs a subsidy to route additional option orders to the Exchange.[5] The subsidy is applicable to any Exchange member organization that qualifies as a MAP and elects to participate for that calendar month. The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an "Eligible MAP") [6] and elects to participate by submitting any application(s) and/or form(s) required by the Exchange, and complying with other conditions.[7] The Exchange currently pays a monthly subsidy of $0.10 (the "Subsidy Rate") to Eligible MAPs for each Eligible Contract executed in the immediately preceding calendar month above the particular Eligible MAP's Baseline Order Flow.[8]

[3] A Market Access Provider is an Exchange member organization that offers customers automated order routing systems and electronic market access to U.S. options markets ("Market Access Providers" or "MAPs").

[4] "Eligible Contracts" means contracts that result from the execution on the Exchange of: (1) Equity option orders (other than crosses) sent electronically to an Eligible MAP (and routed to the Exchange electronically by the Eligible MAP) by its customers; and (2) MAP Routing Orders (other than crosses) sent electronically by the Eligible MAP. Contracts that are executed electronically as part of a Complex Order are not Eligible Contracts.

[5] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54).

[6] Eligible MAP" means a MAP eligible for the Market Access Provider Subsidy and who is required to: (1) Submit any required Exchange applications and/or forms for Exchange approval to participate as an Eligible MAP; (2) provide to its customers systems that enable the electronic routing of equity option orders to all of the U.S. options exchanges, including Phlx; (3) provide to its customers current consolidated market data from the U.S. options exchanges; (4) interface with Phlx's API to access the Exchange's electronic options trading platform, PHLX XL II; (5) offer to its customers a customized interface and routing functionality (including sweep function described below) such that: (A) Phlx will be the default destination for all equity option orders (whether marketable or not), provided that in the case of marketable orders, Phlx is at the national best bid or offer ("NBBO") on the appropriate side of the market (*i.e.,* the contra-side of the order that is routed to Phlx), regardless of size or time, up to Phlx's disseminated size; and (B) the MAP's option order routing functionality incorporates a feature that causes orders at a specified price to be routed simultaneously to multiple exchanges with a single click (a "sweep function"), which is configured to route all such orders (or, if such orders are for a size larger than the size disseminated by the Phlx on the opposite side of the market, at least the portion of the order that corresponds to Phlx's disseminated size) to Phlx as the default destination for execution for a size up to the full size quoted on the Phlx, provided that, in the case of marketable orders, the Phlx disseminated price on the appropriate side of the market is at the NBBO; (6) configure its own option order routing functionality such that it is configured as described in sub-paragraph 5(A) and (B) above, with respect to all equity option orders as to which the MAP has discretion as to routing ("MAP Routing Orders"); (7) ensure that the customized functionality described in sub-paragraphs (5) and (6) above permits users submitting option orders through such system(s) to manually override the Phlx as the default destination on an order-by-order basis; and (8) enter into and maintain an agreement with the Exchange to function as an Eligible MAP and be in compliance with all terms thereof.

[7] The MAP must enter into a Priority Routing Covenant with the Exchange which is an agreement with Phlx to refrain from entering into arrangements with other exchanges or execution venues where such exchange or execution venue will have the same routing position as, or priority over, Phlx as the default destination for certain option orders, unless Phlx otherwise consents.

[8] "Baseline Order Flow" for an Eligible MAP means the higher of: (1) 500,000 contracts, or (2) the

The Exchange is also proposing to make other technical amendments to the Fee Schedule to renumber Sections VIII through XI to account for the elimination of the Market Access Provider Subsidy section. The Exchange is proposing to eliminate the MAP Subsidy, and not offer any such subsidy as of June 1, 2011.

b. Statutory Basis

The [sic] believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The MAP Subsidy was designed to allow MAPs to offer their customers a customized interface and provide those customers support for such an interface. The Exchange pays a MAP Subsidy to incentivize MAPs to bring order flow to the Exchange. The Exchange believes that eliminating the MAP Subsidy is reasonable because the Exchange no longer desires to incentivize member organizations by offering such a subsidy. The Exchange also believes the proposal is equitable because it would no longer offer such a MAP Subsidy to any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–68 and should be submitted on or before June 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13375 Filed 5–27–11; 8:45 am]

BILLING CODE 8011–01–P

average contracts per month, calculated for the 3-month period immediately preceding the Eligible MAP entering into the agreement with Phlx, that resulted from the execution on the Phlx of equity option orders (other than crosses) routed to Phlx electronically by such Eligible MAP. Contracts that are executed electronically as part of a Complex Order are not included in the calculation of Baseline Order Flow.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64538; File No. SR–ISE–2011–30)

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Complex Orders

May 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to specify in its rules that complex orders may be entered into the Price Improvement Mechanism for options classes traded on its Optimise platform. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange has developed an enhanced technology trading platform (the "Optimise platform"). To assure a smooth transition, the Exchange is in the process of migrating option classes from its current trading system to the Optimise platform.[3] The Optimise platform offers members the same trading functionality as the current trading system with some enhancements, several of which were previously added to the ISE's rules.[4] The purpose of this rule filing is to specify in the Exchange's rules that complex orders may be entered into the Price Improvement Mechanism for options classes traded on the Optimise platform.

The Exchange's Facilitation Mechanism has been available for the execution of complex orders since 2005[5] and the Solicited Order Mechanism has been available for the execution of complex orders since 2006.[6] Both of the mechanisms expose orders to all exchange members for one second to provide an opportunity for price improvement. Supplementary Material .08 to Rule 716 specifies that members may use the Facilitation Mechanism and the Solicited Order Mechanism to execute complex orders at a net price. The complex orders are processed in the mechanisms at the net price in the same manner as single-legged orders. With respect to the bids and offers for the individual legs of a complex order entered into the mechanisms, the priority rules for complex orders contained in Rule 722(b)(2) continue to apply. If an improved net price for the complex order being executed can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being executed will receive an execution at the better net price.

The Price Improvement Mechanism works in the same basic manner as the Facilitation Mechanism and the Solicited Order Mechanism, exposing orders to all members for one second to provide an opportunity for price improvement. The Exchange proposes to make the Price Improvement Mechanism available for the execution of complex orders on the Optimise platform by adding Supplementary Material .10 to Rule 723. Proposed Supplementary Material .10 to Rule 723 specifies that members may use the Price Improvement Mechanism to execute complex orders at a net price. The complex orders are processed in the mechanisms at the net price in the same manner as single-legged orders. With respect to the bids and offers for the individual legs of a complex order entered into the mechanisms, the priority rules for complex orders contained in Rule 722(b)(2) continue to apply. If an improved net price for the complex order being executed can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being executed will receive an execution at the better net price.[7]

Rule 723(b)(1) requires that orders entered into the Price Improvement Mechanism be entered at a price that is better than the ISE best bid or offer and equal to or better than the national best bid or offer, and Supplementary Material .08 to Rule 723 provides an exception to this requirement. Proposed Supplementary Material .10 to Rule 723 specifies that Complex orders must be entered at a price that is better than the best net price (i) available on the complex order book; and (ii) achievable from the best ISE bids and offers for the individual legs (an "improved net price"). It also specifies that Supplementary Material .08 is not applicable to the entry of complex orders; complex orders will be rejected unless they are entered at an improved net price. Proposed Supplementary Material .10 further specifies that all references to the national best bid and offer in Rule 723 and the Supplementary Material thereto are inapplicable. Finally, Rule 723(c)(5) specifies that the exposure period will automatically terminate upon the receipt of certain orders. Proposed Supplementary Material .10 specifies that the provisions of Rule 723(c)(5) shall apply with respect to the receipt of complex orders during the exposure period, and not to the receipt of orders for the individual legs of the complex order. Accordingly, the exposure period will not automatically terminate due to the receipt of orders for the individual legs of the complex order during the exposure period. As mentioned previously, if at the end of the exposure period an improved net price for the complex order can be achieved from bids and offers for the individual legs of the complex order, the order will be executed against such bids and offers.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[8] in that the proposed change will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change will make an existing service available to an additional order type. By making the Price Improvement Mechanism available for complex orders, members will be given an additional way in which they can seek price improvement for their customers when executing complex orders on the Exchange. Moreover, the Proposal assures that the existing priority rules applicable to the execution of complex orders is maintained and automatically enforced by the system.

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.

[3] Options classes are being transferred from the current trading platform to the Optimise trading platform. The same options cannot trade on both systems at the same time.

[4] *See* Securities Exchange Act Release No. 63117 (October 15, 2010), 75 FR 65042 (October 21, 2010) (SR–ISE–2010–101); and Securities Exchange Act Release No. 64275 (April 8, 2011), 76 FR 21087 (April 14, 2011) (File No. SR–ISE–2011–24).

[5] Securities Exchange Act Release No. 52327 (August 24, 2005), 70 FR 51854 (August 31, 2005) (File No. SR–ISE–2004–33).

[6] Securities Exchange Act Release No. 53729 (April 26, 2006), 71 FR 26154 (May 3, 2006) (File No. SR–ISE–2006–14).

[7] The Exchange provides the Commission with monthly statistics related to PIM order execution. These statistics will include Complex Orders executed through the PIM.

[8] 15 U.S.C. 78f(b)(5).

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 up to 90 days (i) as the Commission may designate 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 the 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–ISE–2011–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–30 and should be submitted on or before June 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13315 Filed 5–27–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12599 and #12600]

Kentucky Disaster # KY–00040

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/19/2011.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 04/22/2011 and continuing.

Effective Date: 05/19/2011.

Physical Loan Application Deadline Date: 07/18/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/21/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/19/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Boyd, Crittenden, Graves, Hardin, Hickman, Jefferson, Livingston, Marshall, McCracken, Union, Webster.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Ballard, Breckinridge, Bullitt, Caldwell, Calloway, Carlisle, Carter, Fulton, Grayson, Greenup, Hart, Henderson, Hopkins, Larue, Lawrence, Lyon, McLean, Meade, Nelson, Oldham, Shelby, Spencer, Trigg.

Illinois: Gallatin, Hardin, Massac, Pope, Pulaski.

Indiana: Clark, Floyd, Harrison, Posey.

Missouri: Mississippi.

Ohio: Lawrence.

Tennessee: Henry, Obion, Weakley.

West Virginia: Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12599B and for economic injury is 126000.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13308 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12576 and #12577]

Missouri Disaster Number MO–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of Missouri (FEMA–1980–DR), dated 05/09/2011.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 04/19/2011 and continuing.

Effective Date: 05/23/2011.

Physical Loan Application Deadline Date: 07/08/2011.

EIDL Loan Application Deadline Date: 02/09/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Missouri, dated 05/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Jasper, Newton.

Contiguous Counties (Economic Injury Loans Only):

Kansas: Cherokee, Crawford.

Missouri: Barton, Dade.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13344 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12576 and #12577]

Missouri Disaster Number MO–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1980–DR), dated 05/09/2011.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 04/19/2011 and continuing.

Effective Date: 05/20/2011.

Physical Loan Application Deadline Date: 07/08/2011.

EIDL Loan Application Deadline Date: 02/09/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of MISSOURI, dated 05/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cape Girardeau, Howell, Mcdonald, Pulaski, Ripley, Scott, Stoddard, Stone.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Barry, Bollinger, Camden, Laclede, Lawrence, Maries, Miller, Newton, Oregon, Perry, Phelps, Shannon, Texas.

Arkansas: Benton, Fulton, Randolph.

Illinois: Union.

Oklahoma: Delaware, Ottawa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13343 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12584 and #12585]

Alabama Disaster Number AL–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA—1971—DR), dated 04/28/2011 .

Incident: Severe storms, tornadoes, straight-line winds, and flooding.

Incident Period: 04/15/2011 and continuing.

Effective Date: 05/20/2011.

Physical Loan Application Deadline Date: 06/27/2011

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of ALABAMA, dated 04/28/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Lamar, Tuscaloosa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13310 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12603 and #12604]

Idaho Disaster #ID–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Idaho (FEMA—1987—DR), dated 05/20/2011.

Incident: Flooding, landslides, and mudslides.

Incident Period: 03/31/2011 through 04/11/2011.

Effective Date: 05/20/2011.

Physical Loan Application Deadline Date: 07/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/22/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/20/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bonner, Clearwater, Idaho, Nez Perce, Shoshone, Nez Perce Tribe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 126036 and for economic injury is 126046.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13311 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12566 and #12567]

Kentucky Disaster Number KY–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA—1976—DR), dated 05/04/2011 .

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 04/22/2011 and continuing.

Effective Date: 05/17/2011.

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kentucky, dated 05/04/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Butler, Caldwell, Calloway, Edmonson, Elliott, Graves, Logan, Lyon, Monroe, Todd, Trigg, Fulton, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13312 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12550 and #12551]

Mississippi Disaster Number MS–00047

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–1972–DR), dated 04/29/2011.

Incident: Severe storms, tornadoes, straight-line winds, and associated flooding.

Incident Period: 04/15/2011 through 04/28/2011.

Effective Date: 05/18/2011.

Physical Loan Application Deadline Date: 06/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 01/30/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 04/29/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alcorn, Attala, Clay, De Soto, Holmes, Marshall, Montgomery, Newton, Panola, Quitman, Smith, Tishomingo, Tunica, Winston, Benton, Calhoun, Carroll, Itawamba, Lee, Noxubee, Prentiss, Scott, Tate, Tippah, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13313 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12601 and #12602]

North Dakota Disaster #ND–00026

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1986–DR), dated 05/20/2011.

Incident: Severe winter storm.

Incident Period: 04/29/2011 through 05/01/2011.

Effective Date: 05/20/2011.

Physical Loan Application Deadline Date: 07/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/22/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/20/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bottineau, Burke, Divide, Dunn, Mckenzie, Mountrail, Renville, Ward, Williams.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12601B and for economic injury is 12602B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13314 Filed 5–27–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7487]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba,
Eritrea,
Iran,
Democratic People's Republic of Korea (DPRK, or North Korea),
Syria,
Venezuela.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated:May 11, 2011.

James B. Steinberg,

Deputy Secretary of State.

[FR Doc. 2011–13386 Filed 5–27–11; 8:45 am]

BILLING CODE 4710–10–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting on June 23, 2011, in North East, Maryland. At the public hearing, the Commission will consider: (1) A compliance matter involving one project; (2) the rescission of two docket approvals; (3) action on certain water resources projects; (4) action on seven projects involving a diversion; (5) an administrative appeal of Docket Nos. 20110316, 20110317, and 20110318, by the Allegheny Defense Project; (6) amendments to the Regulatory Program Fee Schedule; and (7) amendment of the Comprehensive Plan for Management of the Water Resources of the Susquehanna River Basin. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: June 23, 2011, at 8:30 a.m.

ADDRESSES: Cecil College, Conference Center, One Seahawk Drive, North East, MD. 21901 (for directions and campus map [Building D], see Web page *http://www.cecil.edu/about/map/northeast.asp*.)

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) The proposed Water Resources Program and an accompanying presentation on the Commission's Chesapeake Bay related activities; (2) hydrologic conditions in the basin; (3) proposed rulemaking to revise the Commission's project review regulations; (4) a preliminary introduction to dockets; (5) a presentation on a pooled assets concept by PPL, Inc.; (6) acquisition of new SRBC headquarters facilities; (7) adoption of a FY–2013 budget; (8) election of officers for FY–2012; and (9) ratification/approval of grants/contracts. The Commission will also hear Legal Counsel's report.

Public Hearing—Compliance Action

1. Project Sponsor: Nature's Way Purewater Systems, Inc. *Project Facility:* Pittston Bottling Facility, Dupont Borough, Luzerne County, Pa.

Public Hearing—Projects Scheduled for Rescission Action

1. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-2) (Docket No. 20090306), Renovo Borough, Clinton County, Pa.

2. *Project Sponsor and Facility:* Pennsylvania Food Group, LLC (Docket No. 20030411), West Donegal Township, Lancaster County, Pa.

Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* Anadarko E&P Company LP (Pine Creek—Jersey Mills), McHenry Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

2. *Project Sponsor and Facility:* Anadarko E&P Company LP (West Branch Susquehanna River–4), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

3. *Project Sponsor and Facility:* Anadarko E&P Company LP (Wolf Run), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

4. *Project Sponsor:* Aqua Pennsylvania, Inc. *Project Facility:* Monroe Manor Water System, Monroe Township, Snyder County, Pa. Application for groundwater withdrawal of up to 0.302 mgd from Well 7.

5. *Project Sponsor and Facility:* Carrizo Marcellus, LLC (Meshoppen Creek), Washington Township, Wyoming County, Pa. Application for surface water withdrawal of up to 2.160 mgd.

6. *Project Sponsor and Facility:* Carrizo Marcellus, LLC (Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.432 mgd.

7. *Project Sponsor and Facility:* Carrizo Marcellus, LLC (Unnamed Tributary to Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

8. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Wappasening Creek), Windham Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.900 mgd.

9. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.715 mgd, subject to rescission of Docket Nos. 20081227 and 20090610.

10. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Wysox Creek), Rome Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.504 mgd.

11. *Project Sponsor and Facility:* Dunn Lake LLC (Dunn Lake), Ararat Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

12. *Project Sponsor:* Exelon Generation Company, LLC. *Project Facility:* Peach Bottom Atomic Power Station, Peach Bottom Township, York County, Pa. Modification to increase consumptive water use from 32.490 mgd up to 49.000 mgd (Docket No. 20061209).

13. *Project Sponsor:* Exelon Generation Company, LLC. *Project Facility:* Three Mile Island Generating Station, Londonderry Township, Dauphin County, Pa. Application for surface water withdrawal of up to 122.800 mgd.

14. *Project Sponsor:* Exelon Generation Company, LLC. *Project Facility:* Three Mile Island Generating Station, Londonderry Township, Dauphin County, Pa. Application for consumptive water use of up to 19.200 mgd.

15. *Project Sponsor and Facility:* Fox Road Waterworks, LLC (South Branch Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.157 mgd.

16. *Project Sponsor and Facility:* Hydro Recovery, LP, Blossburg Borough, Tioga County, Pa. Application for groundwater withdrawal of up to 0.216 mgd from Well HR–1.

17. *Project Sponsor and Facility:* Hydro Recovery, LP, Blossburg Borough, Tioga County, Pa. Application for consumptive water use of up to 0.316 mgd.

18. *Project Sponsor and Facility:* Keystone Clearwater Solutions, LLC (Babb Creek), Morris Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.950 mgd.

19. *Project Sponsor and Facility:* Keystone Clearwater Solutions, LLC (Driftwood Branch), Emporium Borough, Cameron County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

20. *Project Sponsor and Facility:* Keystone Clearwater Solutions, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.292 mgd.

21. *Project Sponsor and Facility:* Keystone Clearwater Solutions, LLC (Lycoming Creek—2), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.000 mgd.

22. *Project Sponsor and Facility:* LHP Management, LLC (Fishing Creek—Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Modification to conditions of the withdrawal approval (Docket No. 20090906).

23. *Project Sponsor and Facility:* Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.584 mgd from Well 1.

24. *Project Sponsor and Facility:* Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.656 mgd from Well 2.

25. *Project Sponsor and Facility:* Nature's Way Purewater Systems, Inc., Covington Township, Lackawanna County, Pa. Application for groundwater withdrawal of up to 0.099 mgd from Covington Springs Well BH–1.

26. *Project Sponsor and Facility:* Nature's Way Purewater Systems, Inc., Dupont Borough, Luzerne County, Pa. Application for consumptive water use of up to 0.400 mgd at the Dupont Bottling Plant.

27. *Project Sponsor:* New Morgan Landfill Company, Inc. *Project Facility:* Conestoga Landfill, New Morgan Borough, Berks County, Pa. Application for groundwater withdrawal of up to 0.008 mgd from Well SW–3.

28. *Project Sponsor and Facility:* Seneca Resources Corporation (Genesee Forks), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 1.920 mgd.

29. *Project Sponsor and Facility:* Talisman Energy USA Inc. (Wappasening Creek), Windham Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

30. *Project Sponsor and Facility:* Tennessee Gas Pipeline Company (Meshoppen Creek—Loop 319), Springville Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.090 mgd.

31. *Project Sponsor and Facility:* Tennessee Gas Pipeline Company (Susquehanna River—Loop 317), Asylum Township, Bradford County, Pa. Application for surface water withdrawal of up to 4.032 mgd.

32. *Project Sponsor and Facility:* Tennessee Gas Pipeline Company (Tioga River—Loop 315), Richmond Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.140 mgd.

33. *Project Sponsor and Facility:* Tennessee Gas Pipeline Company (Tioga River—Loop 315), Richmond Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.144 mgd.

34. *Project Sponsor and Facility:* Tennessee Gas Pipeline Company (Towanda Creek—Loop 317), Monroe Township, Bradford County, Pa. Application for surface water withdrawal of up to 4.032 mgd.

35. *Project Sponsor and Facility:* Tennessee Gas Pipeline Company (White Creek—Loop 319), Springville Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.384 mgd.

36. *Project Sponsor and Facility:* Williamsport Municipal Water Authority, Williamsport City, Lycoming County, Pa. Application for groundwater withdrawal of up to 1.300 mgd from Well 10.

37. *Project Sponsor and Facility:* Williamsport Municipal Water Authority, Williamsport City, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.700 mgd from Well 11.

Public Hearing—Projects Scheduled for Action Involving a Diversion

1. *Project Sponsor:* Chief Oil & Gas LLC. *Project Facility:* Borough of Ebensburg, Cambria Township, Cambria County, Pa. Application for an into-basin diversion of up to 0.249 mgd from the Ohio River Basin.

2. *Project Sponsor:* Chief Oil & Gas LLC. *Project Facility:* Cambria Somerset Authority, Summerhill Township, Cambria County, Pa. Application for an into-basin diversion of up to 0.249 mgd from the Ohio River Basin.

3. *Project Sponsor:* Chief Oil & Gas LLC. *Project Facility:* Highland Sewer and Water Authority, Portage Township, Cambria County, Pa. Application for an into-basin diversion of up to 0.249 mgd from the Ohio River Basin.

4. *Project Sponsor:* Nature's Way Purewater Systems, Inc. *Project Facility:* Nature's Way Springs Borehole 1 (BH–1), Foster Township, Luzerne County, Pa. Application for an into-basin diversion of up to 0.100 mgd from the Delaware River Basin.

5. *Project Sponsor:* Penn Virginia Oil & Gas Corporation. *Project Facility:* Port Allegany Borough, McKean County, Pa. Application for an into-basin diversion of up to 0.100 mgd from the Ohio River Basin.

6. *Project Sponsor:* SWEPI, LP. *Project Facility:* Pennsylvania American Water Company—Warren District, Warren City, Warren County, Pa. Application for an into-basin diversion of up to 3.000 mgd from the Ohio River Basin.

7. *Project Sponsor:* Triana Energy, LLC. *Project Facility:* Johnson Quarry, Roulette Township, Potter County, Pa.

Application for an into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

Public Hearing—Administrative Appeal

Administrative appeal by the Allegheny Defense Project of the March 10, 2011, Commission action approving the following dockets:

1. Docket No. 20110316. *Project Sponsor:* Pennsylvania General Energy Company, L.L.C. *Project Facility:* Scaffold Lick Pond—1, Liberty Township, McKean County, Pa., authorizing an existing into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

2. Docket No. 20110317. *Project Sponsor:* Pennsylvania General Energy Company, L.L.C. *Project Facility:* Scaffold Lick Pond—2, Liberty Township, McKean County, Pa., authorizing an existing into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

3. Docket No. 20110318. *Project Sponsor:* Ultra Resources, Inc. *Project Facility:* Wayne Gravel Products, Ceres Township, McKean County, Pa., authorizing an existing into-basin diversion of up to 1.170 mgd from the Ohio River Basin.

Opportunity to Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *e-mail: srichardson@srbc.net*. Comments mailed or electronically submitted must be received prior to June 17, 2011, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: May 19, 2011.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2011–13289 Filed 5–27–11; 8:45 am]

BILLING CODE 7040–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 104 May 31, 2011

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
7 CFR Part 319

Federal Acquisition Regulation; Federal Acquisition Circular 2005–52; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–52; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–52. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–52 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–52

Item	Subject	FAR case	Analyst
I	Sustainable Acquisition	2010–001	Clark.
II	Contract Closeout	2008–020	McFadden.
III	Prohibition on Contracting with Inverted Domestic Corporations	2008–009	Davis.
IV	Buy American Exemption for Commercial Information Technology—Construction Material	2009–039	Davis.
V	Oversight of Contractor Ethics Programs	2010–017	Robinson.
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–52 amends the FAR as specified below:

Item I—Sustainable Acquisition (FAR Case 2010–001) (Interim)

This interim rule amends the FAR to implement Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency's environmental management system.

Item II—Contract Closeout (FAR Case 2008–020)

This final rule amends the FAR procedures for closing out contracts. A proposed rule was published August 20, 2009. This rule revises procedures and sets forth a timeframe for clearing final patent reports; updates quick-closeout procedures, including applicable thresholds; sets forth a description of an adequate final indirect cost rate proposal and supporting data; and adds language for withholding fees to protect the Government's interest and encourage timely submissions of an adequate final indirect cost rate proposal. The rule does not impose any additional requirements on small businesses.

Item III—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2008–009)

This final rule implements section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) and similar restrictions in 2008 and 2009 appropriations acts, which prohibit the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one, except as permitted in specific exceptions as set forth in the rule. The rule does not impose any requirements on small businesses.

Item IV—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039)

This rule adopts as final, without change, an interim rule. The interim rule amended the FAR to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Item V—Oversight of Contractor Ethics Programs (FAR Case 2010–017)

This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function of ensuring that contractors have implemented FAR 52.203–13, Contractor Code of Business Ethics and Conduct.

Contracting officers may ask to see a contractor's code of ethics or a contractor's ethics program, but the contracting officer is not required to ask for a copy of any documents.

Item VI—Technical Amendments

Editorial changes are made at FAR 52.212–3, 53.301–1447, 53.301–1449, and 52.302–347.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Federal Acquisition Circular (FAC) 2005–52 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR)

and other directive material contained in FAC 2005–52 is effective May 31, 2011, except for Items II and V which are effective June 30, 2011.

Dated: May 18, 2011.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: May 17, 2011.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: May 17, 2011.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2011–12850 Filed 5–27–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 7, 11, 12, 13, 23, 36, 37, 39, and 52

[FAC 2005–52; FAR Case 2010–001; Item I; Docket 2010–0001, Sequence 1]

RIN 9000–AL96

Federal Acquisition Regulation; Sustainable Acquisition

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. This interim rule requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency's environmental management system.

DATES: *Effective Date:* May 31, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 1, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–52, FAR Case 2010–001, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–001" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–001." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–001" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–52, FAR Case 2010–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–52, FAR Case 2010–001.

SUPPLEMENTARY INFORMATION:

I. Background

In the face of changing environmental circumstances and our Nation's heightened energy demands, the Federal Government must lead by example to create a clean energy economy that will increase prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment. Executive Order 13514 (E.O. 13514), Federal Leadership in Environmental, Energy, and Economic Performance, was signed on October 5, 2009 (74 FR 52117, October 8, 2009). It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies and materials, products, and services. The head of each agency shall advance sustainable acquisition by ensuring that 95 percent of new contract actions, including task and delivery orders, for products and services, with the exception of acquisition of weapon systems, are energy-efficient (Energy Star or Federal Energy Management Program (FEMP)-designated), water-efficient, biobased, environmentally preferable (*e.g.,* Electronic Product Environmental Assessment Tool (EPEAT)-registered), non-ozone depleting, contain recycled content, or are non-toxic or less toxic alternatives, where such products and services meet agency performance requirements. Federal agencies are also required to design, construct, maintain and operate high-performance sustainable buildings in sustainable locations.

Similarly, recognizing the long-term impact that Federal environmental management can have on national health and security, Executive Order 13423 (E.O. 13423), Strengthening Federal Environmental, Energy, and Transportation Management, was signed on January 24, 2007 (72 FR 3919, January 26, 2007). E.O. 13423 establishes the policy that Federal agencies shall conduct their environmental, transportation, and energy-related activities in an environmentally, economically, and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.

The authorities throughout the applicable FAR parts are updated to include E.O. 13423 and E.O. 13514. Additionally, authorities throughout the applicable FAR parts are updated to delete references to E.O. 13101, E.O. 13123, and E.O. 13148, because the Executive orders were revoked by E.O. 13423.

Under FAR part 2, the definitions for "renewable energy" and "United States" are revised to reflect the latest definitions of the terms in E.O. 13514. A new definition for "sustainable acquisition," derived from the definition of "sustainable" in E.O. 13514, is added to FAR part 2. The definition of "water consumption intensity" is also added to FAR part 2 from E.O. 13514.

FAR part 4 changes include revisions to the policy for contractor submission of paper documents to the Government and updating the general description of the Federal Procurement Data System (FPDS). In efforts to reduce or prevent waste and meet the intent of the agencies' requirement to purchase at least 30 percent postconsumer fiber content paper as directed in both E.O. 13423 and E.O. 13514, contractors are required, if not using electronic commerce methods, to submit paper

documents to the Government on double-sided 30 percent post-consumer fiber paper, whenever practicable. This is a change from the current regulations that only encourage the submission of paper documents on recycled paper. The general description of FPDS is revised to reflect that the Web-based tool will be a means of collecting sustainable acquisition data.

FAR parts 5, 7, and 11 are revised to ensure agencies are including or considering sustainable acquisition requirements in their synopses, acquisition planning documents and functions, and descriptions of agency needs.

Conforming changes are made to FAR parts 12 and 13.

FAR part 23 is revised to ensure that the policy of "leading by example" is followed by Federal agencies. This includes fostering markets for sustainable technologies, materials, products, and services, as a goal of agency acquisitions.

FAR 23.001 is amended to add new definitions for "environmental," "greenhouse gases," and "United States." All the definitions derive from E.O. 13514. FAR 23.002 is added to implement a policy, derived from E.O. 13423 sections 3(e) and (f), which requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order to the same extent as the agency would be required to comply if the agency operated or supported the facility. Compliance includes developing programs to promote and implement cost-effective waste reduction.

A new FAR subpart 23.1, Sustainable Acquisition, is added to implement section 2(h) and section 18 of E.O. 13514. Federal agencies, with certain exceptions or exemptions, are required to advance sustainable acquisition by ensuring that 95 percent of new contract actions (including those for construction) contain requirements for products that are designated as energy-efficient, water-efficient, biobased, environmentally preferable (*e.g.,* EPEAT-registered, non-toxic or less toxic alternatives), non-ozone depleting, or those that contain recovered materials. A new definition for "contract action" is added to the new FAR subpart 23.1.

Changes to FAR subpart 23.2, Energy and Water Efficiency and Renewable Energy, include updates to the authorities and policy. Sections (2)(d) and 14 of E.O. 13514, relating to the use and management of water through water-efficient means, are implemented in FAR subpart 23.2.

FAR 23.403 is revised to require agencies to purchase recycled content and biobased products or require them in the acquisition of services; the delivery, use, or furnishing of such products, which must meet, but may exceed, the minimum recycled or biobased content of an United States Environmental Protection Agency (EPA)- or United States Department of Agriculture-designated product.

Under FAR subpart 23.8, agencies are required to substitute safe alternatives to ozone-depleting substances. This subpart is revised to inform agencies that EPA's Significant New Alternatives Policy (SNAP) program (available at *http://www.epa.gov/ozone/snap*) has a list of safe alternatives to ozone-depleting substances.

DoD, GSA, and NASA deleted the content of FAR subpart 23.9, which required contractors to report to agencies compliance with the toxic chemical release reporting. E.O. 13148 required contractors to affirm compliance with toxic chemical release reporting requirements. E.O. 13148 was revoked by E.O. 13423. The associated clauses at FAR 52.223–13 and 52.223–14 are also deleted. Toxic chemical release reporting remains a requirement under environmental statutes and regulations, but the coverage in the FAR and the contract clauses are being deleted. FAR subpart 23.9 now requires contractor compliance with an agency's environmental management system. A new clause is prescribed to meet this requirement for contractor operation of Government-owned or -leased facilities in the United States, unless the agency head determines that use of the clause is in the interest of the facilities not located in the United States.

The requirement to implement high-performance sustainable building design, construction, renovation, repair, operation, and management stated in E.O. 13514 is included in FAR 36.104. In addition, new definitions are added at FAR 36.001, and a Web site is provided for accessing the "Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings."

This interim rule adds language at FAR 37.102 requiring agencies to ensure that service contracts that require the delivery, use, or furnishing of products are consistent with FAR part 23.

To promote electronics stewardship, the policy at FAR 39.101 implements provisions of section 2(i) of E.O. 13514 to require agencies to enable power management, double-sided printing, and other energy-efficient or environmentally preferable features on all agency electronic products. The policy also requires agencies to employ best management practices for energy-efficient management of servers and Federal data centers.

FAR part 52 is revised to incorporate the policies reflected in E.O. 13514 and E.O. 13423. The modified clauses include—

- FAR 52.204–4, Printed or Copied Double-Sided Postconsumer Fiber Paper;
- FAR 52.204–8, Annual Representations and Certifications;
- FAR 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items);
- FAR 52.223–5, Pollution Prevention and Right-to-Know Information; and
- FAR 52.223–10, Waste Reduction Program.

Additionally, DoD, GSA, and NASA added the clause at FAR 52.223–19 to address contractor compliance with environmental management systems.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it is only emphasizing existing requirements. The majority of the requirements of E.O. 13423 and E.O. 13514 have been implemented through previous Executive orders, laws, and sustainable programs. DoD, GSA, and NASA recognize that the rule may have overall pluses that create opportunities for niche products for small businesses because agencies have to ensure that 95 percent of new contract actions advance sustainable acquisition, but the number

of entities affected, and the extent to which they will be affected, is not expected to be significant. The clause requiring contractors to comply with an agency's environmental management system was required through E.O. 13148. DoD, GSA, and NASA believe that this requirement may affect small entities performing contracts for those agencies that have not fully implemented an environmental management system, but the number of entities affected, and the extent to which they will be affected, is not expected to be significant. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010–001) in all correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does apply because this interim rule removes the requirement that governed contractor compliance with toxic chemical release reporting. Provisions relevant to toxic chemical release reporting have been deleted from the FAR by deleting FAR clauses 52.223–13 and 52.223–14. A change notice will be submitted to cancel this requirement under OMB Clearance 9000–0139. The collection requirements remain unchanged for FAR clause 52.223–5, covered by OMB Clearance 9000–0137, Pollution Prevention and Right-to-Know Information.

V. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements E.O. 13514 and E.O. 13423, already in effect. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 4, 5, 7, 11, 12, 13, 23, 36, 37, 39, and 52

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 5, 7, 11, 12, 13, 23, 36, 37, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 4, 5, 7, 11, 12, 13, 23, 36, 37, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by removing FAR segments "23.9", "52.223–13", and "52.223–14" and their corresponding OMB Control Number "9000–0139".

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b)(2) by—

■ a. Revising the definition "Renewable energy";

■ b. Adding, in alphabetical order, the definition "Sustainable acquisition";

■ c. In the definition "United States" redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively; and adding a new paragraph (7); and

■ d. Adding, in alphabetical order, the definition "Water consumption intensity."

The revised and added text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Renewable energy means energy produced by solar, wind, geothermal, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project (Energy Policy Act of 2005, 42 U.S.C. 15852).

* * * * *

Sustainable acquisition means acquiring goods and services in order to create and maintain conditions—

(1) Under which humans and nature can exist in productive harmony; and

(2) That permit fulfilling the social, economic, and other requirements of present and future generations.

* * * * *

United States * * *

(7) For use in part 23, see definition at 23.001.

* * * * *

Water consumption intensity means water consumption per square foot of building space.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 4. Revise section 4.302 to read as follows:

4.302 Policy.

(a) Section 3(a) of E.O. 13423, Strengthening Federal Environmental, Energy, and Transportation Management, directs agencies to implement waste prevention. In addition, section 2(e) of E.O. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, directs agencies to eliminate waste. Electronic commerce methods (see 4.502) and double-sided printing and copying are best practices for waste prevention.

(b) When electronic commerce methods (see 4.502) are not used, agencies shall require contractors to submit paper documents to the Government relating to an acquisition printed or copied double-sided on at least 30 percent postconsumer fiber paper whenever practicable. If the contractor cannot print or copy double-sided, it shall print or copy single-sided on at least 30 percent postconsumer fiber paper.

■ 5. Amend section 4.602 by removing from paragraph (a)(2) "contract; and" and adding "contract;" in its place; redesignating paragraph (a)(3) as paragraph (a)(4); and adding a new paragraph (a)(3) to read as follows:

4.602 General.

(a) * * *

(3) A means of measuring and assessing the effect of Federal contracting for promoting sustainable technologies, materials, products, and high-performance sustainable buildings. This is accomplished by collecting and reporting agency data on sustainable acquisition, including types of products purchased, the purchase costs, and the exceptions used for other than sustainable acquisition; and

* * * * *

4.1202 [Amended]

■ 6. Amend section 4.1202 by removing paragraph (u); and redesignating

paragraphs (v) through (cc) as paragraphs (u) through (bb), respectively.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 7. Amend section 5.207 by redesignating paragraphs (c)(11) through (c)(18) as paragraphs (c)(12) through (c)(19), respectively; and adding a new paragraph (c)(11) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(11) Sustainable acquisition requirements (or a description of high-performance sustainable building practices required, if for design, construction, renovation, repair, or deconstruction) (see parts 23 or 36).

* * * * *

PART 7—ACQUISITION PLANNING

■ 8. Amend section 7.103 by revising paragraph (p) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(p) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the 30 percent postconsumer fiber minimum content standards specified in section 2(d)(ii) of Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management, and section 2(e)(iv) of Executive Order 13514 of October 5, 2009 (see 11.303);

(2) Comply with the policy in 11.002(d) regarding procurement of: biobased products, products containing recovered materials, environmentally preferable products and services (including Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, nontoxic or low-toxic alternatives), ENERGY STAR® and Federal Energy Management Program-designated products, renewable energy, water-efficient products, and non-ozone depleting products;

(3) Comply with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (Guiding Principles), for the design, construction, renovation, repair, or deconstruction of Federal buildings. The Guiding Principles can be accessed at *http://www.wbdg.org/pdfs/hpsb_guidance.pdf;* and

(4) Require contractor compliance with Federal environmental requirements, when the contractor is operating Government-owned facilities or vehicles, to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

* * * * *

7.105 [Amended]

■ 9. Amend section 7.105 by removing from paragraph (b)(17) "contracts." and adding "contracts (see 11.002 and 11.303)." in its place.

PART 11—DESCRIBING AGENCY NEEDS

■ 10. Amend section 11.002 by revising paragraphs (d)(1) and (d)(2) introductory text to read as follows:

11.002 Policy.

* * * * *

(d)(1) When agencies acquire products and services, various statutes and executive orders (identified in part 23) require consideration of sustainable acquisition (see subpart 23.1) including—

(i) Energy-efficient and water-efficient services and products (including products containing energy-efficient standby power devices) (subpart 23.2);

(ii) Products and services that utilize renewable energy technologies (subpart 23.2);

(iii) Products containing recovered materials (subpart 23.4);

(iv) Biobased products (subpart 23.4);

(v) Environmentally preferable products and services, including EPEAT-registered electronic products and non-toxic or low-toxic alternatives (subpart 23.7); and

(vi) Non-ozone depleting substances (subpart 23.8).

(2) Unless an exception applies and is documented by the requiring activity, Executive agencies shall, to the maximum practicable, require the use of products and services listed in paragraph (d)(1) of this section when—

* * * * *

■ 11. Revise section 11.303 to read as follows:

11.303 Special requirements for paper.

(a) The following applies when agencies acquire paper in the United States (as defined in 23.001):

(1) Section 2(d)(ii) of Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, establishes a 30 percent postconsumer fiber content standards for agency paper use. Section 2(d)(ii) requires that an agency's paper products must meet or exceed the minimum content standard.

(2) Section 2(e)(iv) of Executive Order 13514 requires acquisition of uncoated printing and writing paper containing at least 30 percent postconsumer fiber.

(b) *Exceptions.* If paper under paragraphs (a)(1) or (a)(2) of this section containing at least 30 percent postconsumer fiber is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase—

(1) Printing and writing paper containing no less than 20 percent postconsumer fiber; or

(2) Paper, other than printing and writing paper, with the maximum practicable percentage of postconsumer fiber that is reasonably available at a reasonable price and that meets reasonable performance requirements.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 12. Amend section 12.102 by revising paragraph (c) to read as follows:

12.102 Applicability.

* * * * *

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 13. Amend section 13.201 by revising paragraph (f) to read as follows:

13.201 General.

* * * * *

(f) The procurement requirements in subparts 23.1, 23.2, 23.4, and 23.7 apply to purchases at or below the micro-purchase threshold.

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 14. Revise section 23.000 to read as follows:

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace, for protecting and improving the quality of the environment, and to foster markets for sustainable technologies, materials,

products, and services, and encouraging the safe operation of vehicles by—

(a) Reducing or preventing pollution;

(b) Managing efficiently and reducing energy and water use in Government facilities;

(c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable (including EPEAT-registered, and non-toxic and less toxic) products, products containing recovered materials, non-ozone depleting products, and biobased products;

(e) Requiring contractors to identify hazardous materials;

(f) Encouraging contractors to adopt and enforce policies that ban text messaging while driving; and

(g) Requiring contractors to comply with agency environmental management systems.

■ 15. Revise section 23.001 to read as follows:

23.001 Definitions.

As used in this part—

Environmental means environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions.

Greenhouse gases means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

United States, except as used in subpart 23.10, means—

(1) The fifty States;

(2) The District of Columbia;

(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4) The territories of Guam, American Samoa, and the United States Virgin Islands; and

(5) Associated territorial waters and airspace.

■ 16. Add section 23.002 to read as follows:

23.002 Policy.

Executive Order 13423 sections 3(e) and (f) require that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order to the same extent as the agency would be required to comply if the agency operated or supported the facility. Compliance includes developing programs to promote and implement cost-effective waste reduction.

■ 17. Add subpart 23.1 to read as follows:

Subpart 23.1—Sustainable Acquisition Policy

Sec.

23.101 Definition.
23.102 Authorities.
23.103 Sustainable acquisitions.
23.104 Exceptions.
23.105 Exemption authority.

Subpart 23.1—Sustainable Acquisition Policy

23.101 Definition.

As used in this subpart—

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars, including purchases below the micro-purchase threshold. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

23.102 Authorities.

(a) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(b) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

(c) All of the authorities specified in subparts 23.2, 23.4, 23.7, 23.8, 23.9, and 23.10.

23.103 Sustainable acquisitions.

(a) Federal agencies shall advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) require that the products are—

(1) Energy-efficient (ENERGY STAR® or Federal Energy Management Program (FEMP)-designated);

(2) Water-efficient;

(3) Biobased;

(4) Environmentally preferable (*e.g.,* EPEAT-registered, or non-toxic or less toxic alternatives);

(5) Non-ozone depleting; or

(6) Made with recovered materials.

(b) The required products in the contract actions for services include products that are—

(1) Delivered to the Government during performance;

(2) Acquired by the contractor for use in performing services at a Federally-controlled facility; or

(3) Furnished by the contractor for use by the Government.

(c) The required products in the contract actions must meet agency performance requirements.

(d) For purposes of meeting the 95 percent sustainable acquisition requirement, the term "contract actions" includes new contracts (and task and delivery orders placed against them) and new task and delivery orders on existing contracts.

23.104 Exceptions.

This subpart does not apply to the following acquisitions:

(a) Contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States.

(b) Weapon systems.

23.105 Exemption authority.

(a) The head of an agency may exempt—

(1) Intelligence activities of the United States, and related personnel, resources, and facilities, to the extent the Director of National Intelligence or agency head determines it necessary to protect intelligence sources and methods from unauthorized disclosure;

(2) Law enforcement activities of that agency and related personnel, resources, and facilities, to the extent the head of an agency determines it necessary to protect undercover operations from unauthorized disclosure;

(3) Law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency; and

(4) Agency activities and facilities in the interest of national security.

(b) If the head of the agency issues an exemption under paragraph (a) of this section, the agency must notify the Chair of the Council on Environmental Quality in writing within 30 days of the issuance of the exemption.

(c) The agency head may submit through the Chair of the Council on Environmental Quality a request for exemption of an agency activity other than those activities listed in paragraph (a) of this section and related personnel, resources, and facilities.

■ 18. Revise section 23.201 to read as follows:

23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) and Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8259b, 8262g, and 8287).

(c) Section 706 of Division D, Title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8).

(d) Title VI of the Clean Air Act, as amended (42 U.S.C. 7671, *et seq.*).

(e) Executive Order 11912 of April 13, 1976, Delegations of Authority under the Energy Policy and Conservation Act.

(f) Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices.

(g) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(h) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

■ 19. Revise section 23.202 to read as follows:

23.202 Policy.

(a) *Introduction.* The Government's policy is to acquire supplies and services that promote a clean energy economy that increases our Nation's energy security, safeguards the health of our environment, and reduces greenhouse gas emissions from direct and indirect Federal activities. To implement this policy, Federal acquisitions will foster markets for sustainable technologies, products, and services. This policy extends to all acquisitions, including those below the simplified acquisition threshold and those at or below the micro-purchase threshold (including those made with a Government purchase card).

(b) *Water-efficient.* In accordance with Executive Order 13514, dated October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance, it is the policy and objective of the Government to use and manage water through water-efficient means by—

(1) Reducing potable water consumption intensity to include low-flow fixtures and efficient cooling towers;

(2) Reducing agency, industry, landscaping, and agricultural water consumption; and

(3) Storm water management in accordance with section 438 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17094) as implemented in *http://www.epa.gov/nps/lid/section438.*

■ 20. Amend section 23.205 by revising paragraph (a) to read as follows:

23.205 Energy-savings performance contracts.

(a) Agencies should make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

* * * * *

■ 21. Amend section 23.402 by revising paragraphs (c) and (d) and adding paragraph (e) to read as follows:

23.402 Authorities.

* * * * *

(c) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(d) The Energy Policy Act of 2005, Public Law 109–58.

(e) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

■ 22. Revise section 23.403 to read as follows:

23.403 Policy.

Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Agencies shall purchase these products or require in the acquisition of services, the delivery, use, or furnishing (see 23.103(b)) of such products. Agency contracts should specify that these products are composed of the highest percent of recovered material or biobased content practicable, or at least meet, but may exceed, the minimum recovered materials or biobased content of an EPA- or USDA-designated product. Agencies shall purchase these products to the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such products shall meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at 23.404(b), virgin material shall not be required by the solicitation (see 11.302).

■ 23. Amend section 23.702 by removing paragraphs (d), (e), and (f); redesignating paragraphs (g), (h), and (i) as paragraphs (d), (e), and (f), respectively; and adding a new paragraph (g) to read as follows:

23.702 Authorities.

* * * * *

(g) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

23.704 [Removed]

■ 24. Remove section 23.704.

23.705 and 23.706 [Redesignated as 23.704 and 23.705]

■ 25a. Redesignate sections 23.705 and 23.706 as sections 23.704 and 23.705, respectively.

23.705 [Amended]

■ 25b. In newly redesignated section 23.705, remove from paragraph (b)(1) "23.705(c)" and add "23.704(c)" in its place.

■ 26. Revise section 23.801 to read as follows:

23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Section 706 of Division D, Title VII of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8).

(c) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(d) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

(e) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR Part 82).

■ 27. Amend section 23.803 by revising paragraphs (b)(1) and (2) to read as follows:

23.803 Policy.

* * * * *

(b) * * *

(1) Comply with the requirements of Title VI of the Clean Air Act, Section 706 of Division D, Title VII of Public Law 111–8, Executive Order 13423, Executive Order 13514, and 40 CFR 82.84(a)(2), (3), (4), and (5); and

(2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(r). EPA's Significant New Alternatives Policy (SNAP) program (available at *http://www.epa.gov/ozone/snap*) has a list of safe alternatives to ozone-depleting substances.

■ 28. Revise subpart 23.9 to read as follows:

Subpart 23.9—Contractor Compliance With Environmental Management Systems

Sec.

23.900 Scope.
23.901 Authority.
23.902 Policy.
23.903 Contract clause.

Subpart 23.9—Contractor Compliance With Environmental Management Systems

23.900 Scope.

This subpart implements the environmental management systems requirements for contractors.

23.901 Authority.

(a) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(b) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

23.902 Policy.

(a) Agencies shall implement environmental management systems (EMS) at all appropriate organizational levels. Where contractor activities affect an agency's environmental management aspects, EMS requirements shall be included in contracts to ensure proper implementation and execution of EMS roles and responsibilities.

(b) The contracting officer shall—

(1) Specify the EMS directives with which the contractor must comply; and

(2) Ensure contractor compliance to the same extent as the agency would be required to comply, if the agency operated the facilities or vehicles.

23.903 Contract clause.

The contracting officer shall insert the clause at 52.223–19, Compliance With Environmental Management Systems, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities or vehicles, located in the United States. For facilities located outside the United States, the agency head may determine that use of the clause is in the best interest of the Government.

■ 29. Amend section 23.1001 by revising paragraph (c); and adding paragraph (d) to read as follows:

23.1001 Authorities.

* * * * *

(c) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(d) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

23.1003 [Amended]

■ 30. Amend section 23.1003 by removing the definition "Priority chemical".

■ 31. Revise section 23.1004 to read as follows:

23.1004 Requirements.

(a) Federal facilities are required to comply with—

(1) The emergency planning and toxic release reporting requirements in EPCRA and PPA; and

(2) The toxic chemical, and hazardous substance release and use reduction goals of sections 2(e) and 3(a)(vi) of Executive Order 13423.

(b) Pursuant to EPCRA, PPA, E.O. 13423, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the—

(1) Requirements in paragraph (a) of this section; and

(2) Requirements for EMSs and FCAs if the place of performance is at a Federal facility designated by the agency.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 32. Add section 36.001 to read as follows:

36.001 Definitions.

As used in this part—

Construction and demolition materials and debris means materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure.

Diverting means redirecting materials that might otherwise be placed in the waste stream to recycling or recovery, excluding diversion to waste-to-energy facilities.

■ 33. Revise section 36.104 to read as follows:

36.104 Policy.

(a) Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (40 U.S.C. 1101 *et seq.*) or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by 10 U.S.C. 2305a or 41 U.S.C. 253m when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see subpart 36.3). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the design-build process described in 10 U.S.C. 2862.

(b) Agencies shall implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices so as to—

(1) Ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (available at *http://www.wbdg.org/pdfs/hpsb_guidance.pdf*);

(2) Pursue cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials;

(3) Identify alternatives to renovation that reduce existing assets' deferred maintenance costs;

(4) Ensure that rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and

(5) Ensure pollution prevention and eliminate waste by diverting at least 50 percent of construction and demolition materials and debris by the end of Fiscal Year 2015.

PART 37—SERVICE CONTRACTING

■ 34. Amend section 37.102 by adding paragraph (i) to read as follows:

37.102 Policy.

* * * * *

(i) Agencies shall ensure that service contracts that require the delivery, use, or furnishing of products are consistent with part 23.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 35. Amend section 39.101 by revising paragraph (b)(1) to read as follows:

39.101 Policy.

* * * * *

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A–130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency;

(ii) Electronic Product Environmental Assessment Tool (EPEAT) standards (see 23.704);

(iii) Policies to enable power management, double-sided printing, and other energy-efficient or environmentally preferable features on all agency electronic products; and

(iv) Best management practices for energy-efficient management of servers and Federal data centers.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 36. Revise section 52.204–4 to read as follows:

52.204–4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper.

As prescribed in 4.303, insert the following clause:

Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)

(a) *Definitions.* As used in this clause—

Postconsumer fiber means—(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

(End of clause)

■ 37. Amend section 52.204–8 by revising the date of the provision; removing paragraph (c)(2)(vi); and redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii), respectively.

The revised text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (May 2011)

* * * * *

■ 38. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(vii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (May 2011)

* * * * *

(b) * * *

(1) * * *

(vii) 52.223–5, Pollution Prevention and Right-to-Know Information (May 2011) (E.O. 13423) (Applies to services performed on Federal facilities).

* * * * *

■ 39. Amend section 52.223–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a) the definition "Priority chemical";

■ c. Revising paragraphs (b) and (c)(6);

■ d. Revising the date of Alternate I and paragraph (c)(7); and

■ e. Revising the date of Alternate II and paragraph (c)(7).

The revised text reads as follows:

52.223–5 Pollution Prevention and Right-to-Know Information.

* * * * *

Pollution Prevention and Right-to-Know Information (May 2011)

* * * * *

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109).

(c) * * *

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

* * * * *

Alternate I (May 2011). * * *

(c)(7) The environmental management system as described in section 3(b) of E.O. 13423 and 2(j) of E.O. 13514.

Alternate II (May 2011). * * *

(c)(7) The facility compliance audits as described in section 3(c) of E.O. 13423.

■ 40. Amend section 52.223–10 by revising the introductory paragraph, the date of the clause, and the first sentence of paragraph (b) to read as follows:

52.223–10 Waste Reduction Program.

As prescribed in 23.705(a), insert the following clause:

Waste Reduction Program (May 2011)

* * * * *

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. * * *

52.223–13 and 52.223–14 [Removed and Reserved]

■ 41. Remove and reserve sections 52.223–13 and 52.223–14.

■ 42. Amend section 52.223–16 by revising the introductory paragraph, and the introductory paragraph of Alternate I to read as follows:

52.223–16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

As prescribed in 23.705(b)(1), insert the following clause:

* * * * *

Alternate I (Dec 2007). As prescribed in 23.705(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

* * * * *

■ 43. Add section 52.223–19 to read as follows:

52.223–19 Compliance with Environmental Management Systems.

As prescribed in 23.903, insert the following clause:

Compliance With Environmental Management Systems (May 2011)

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

(End of clause)

[FR Doc. 2011–12851 Filed 5–27–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 42, and 52

[FAC 2005–52; FAR Case 2008–020; Item II; Docket 2009–0031, Sequence 1]

RIN 9000–AL43

Federal Acquisition Regulation; Contract Closeout

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) procedures for closing out contract files. This case revises procedures for clearing final patent reports and quick-closeout procedure, and sets forth a description of an adequate final indirect cost rate proposal and supporting data.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Clare McFadden, Procurement Analyst,

at (202) 501–0044, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–52, FAR Case 2008–020.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 42044 on August 20, 2009. Sixteen respondents provided comments. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in development of the final rule.

II. Discussion and Analysis of the Public Comments

Comments received were grouped under 13 general topics. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. "Adequacy" Definition

The final rule implements the changes published in the proposed rule, without further amendments in response to comments in this category.

Comment: One respondent recommends a new definition for "adequacy" at FAR 42.705–1. The respondent states that guidelines for determining adequacy should be established in order to provide a baseline against which the contracting officer can resolve differences of opinion on adequacy between the auditor and the contractor.

Response: A new definition is not necessary, as specific information has been provided in the clause to ensure uniformity, consistency, and fairness for all contractors. This assures that contractors are fully informed in advance of the Government's parameters for the content of an adequate final indirect cost rate proposal.

B. Adequacy Determination

The final rule implements the changes published in the proposed rule, without further amendments in response to comments in this category.

Comment: One respondent recommends the term "adequate" be replaced with "complete" or "detailed" at FAR 42.705–1(b). The respondent states that the phrase "the contractor shall submit * * * an adequate indirect cost rate proposal" is inappropriate, as the Defense Contract Audit Agency (DCAA) has historically interpreted the term "adequate" to mean identical to DCAA's incurred cost model.

Response: Use of the term "adequate" for describing the Government's requirements for submission of costs is more appropriate than utilizing the terms "complete" or "detailed". The FAR already required the submission of an adequate final indirect cost rate proposal (FAR 42.705–1(b)). This final rule establishes the content of an adequate submission.

C. Adequacy Determination and Roles

The final rule includes amendments to FAR 42.705–1(b) and 42.705–2(b) in response to comments in this category.

Comment: One respondent recommends that the granting of an extension to the contractor for submitting its indirect cost rate proposal by the contracting officer be made in writing at FAR 42.705–1(b)(1)(i).

Response: The language at FAR 42.705–1(b)(1)(ii) is revised accordingly.

Comments: Five respondents question whether it is appropriate for DCAA to have sole responsibility to determine the adequacy of indirect cost rate proposals. One respondent believes a determination from the auditor exceeds the auditor's authority under law.

Three respondents state that any final determination regarding adequacy should be the responsibility of the contracting officer. One respondent states that the contracting officer/auditor relationship that is provided for in the audit process should be followed.

Response: The term "determination" in this case was not intended to shift the authority to make determinations from the contracting officer to the auditor; rather, the intent was for the auditor to offer advice to the contracting officer regarding adequacy of the proposal. The language in 42.705–1(b)(1)(iii), 42.705–1(b)(2), and 42.705–2(b) has been revised to remove the term "determination" and to clarify that the auditor reviews the proposal for adequacy and provides the findings of inadequacy to the contracting officer and contractor.

Comment: One respondent states that the proposed rule creates a review process within which there is little latitude for a contracting officer to resolve administrative disagreements between auditors and contractors.

Response: The rule does not diminish the latitude or the authority that contracting officers have to resolve any and all matters arising under the contract with respect to an indirect cost rate proposal. The current FAR already allows flexibility for the content based on the situation, *e.g.,* complexity and size of the contractor.

Comment: One respondent states that the proposed changes at FAR 42.705–1(b)(1)(iv) and FAR 52.216–7(d) contradict FAR 42.705–1(b)(1)(i), which requires the parties to work together to make the proposal, audit, and negotiation process as efficient as possible. The proposed default choice requiring data in FAR 52.216–7(d)(2)(iii) will result in contractors trying to provide unrelated data to avoid an auditor's automatic "checklist" determination of inadequate proposals. Such rigid requirements will lead to an increase in disagreements about the adequacy of final indirect cost rate proposals.

Response: The process of reviewing the proposal for adequacy, performing the audit, and conducting negotiations has not changed. Also, no new requirement is imposed on contractors by this rule. The list of data (schedules) now included in FAR 52.216–7(d) requires the same information previously cited in FAR 42.705–1(b).

D. Adequacy of Indirect Cost Rate Proposal

The final rule includes amendments to FAR 52.216–7(d)(2)(iv) in response to comments in this category.

Comment: One respondent agrees with the proposed language at FAR 42.705–1 as positive changes.

Comment: One respondent states that the proposed rule was not clear as to whether the list of required data in FAR 52.216–7(d)(2)(iv) that "may" be submitted with the proposal will be considered in making a determination of the adequacy of the contractor's proposal. The respondent recommends clarification.

Response: The language at FAR 52.216–7(d)(2)(iv) has been revised by replacing "will" with "may"; however, clarification of FAR 42.705–1(b)(1)(ii) is not necessary. The supplemental information listed in FAR 52.216–7(d)(2)(iv) is not required for a determination on the adequacy for the contractor's proposal for audit.

Comment: One respondent states that the proposed statement at FAR 42.705–1(b)(1)(iii) "The proposal must be supported with adequate supporting data, which may be required subsequent to proposal submission" is repetitious of FAR 52.216–7(d)(iv) and unnecessary. The respondent further states that the statement adds a level of subjectivity as contractors guess at what information "may be required" subsequent to submission.

Response: The contractor's requirements are located in the clause at FAR 52.216–7(d)(2)(iv). The FAR 42.705–1(b)(1)(iv) text is directed to the contracting officer, explaining the supplemental information that is

required by contract clause, FAR clause 52.216–7, Allowable Cost and Payment. The language directed to the contracting officer and the contract clause serve different purposes; therefore, both are necessary.

Comment: One respondent recommends rescinding the proposed rule and revising the approach to determining adequacy. The respondent states that the approach taken to set forth a description of an adequate final indirect cost rate proposal and supporting data fails to improve the process and unnecessarily creates additional and very significant process and administrative problems.

Response: The rule will provide uniformity and consistency. Further, the information is not new and should be readily available from the contractor's books, records, and systems.

E. Data Requirements

The final rule includes amendments to FAR 52.216–7(d)(2)(iv) in response to the comments in this category. Many respondents submitted comments regarding data requirements.

Comments: Three respondents submitted comments objecting to the volume of data required for determination of an adequate indirect cost rate proposal.

Response: The revisions to FAR 42.705–1 and FAR 52.216–7 are necessary to clarify the submission of an adequate indirect cost rate proposal. While the information required may be considered lengthy, it is not new, and it is essential information necessary for an adequate claim for cost.

Comments: Four respondents believe the proposed rule is overly prescriptive. One respondent specifically suggests the rule is a regulation to legitimize DCAA's longstanding insistence that an adequate final indirect cost rate proposal be inclusive of several mandatory schedules and supplemental information as represented by DCAA within its Model Incurred Cost Proposal rate as stipulated in DCAA Pamphlet No. 7641.90. This respondent further takes the position that use of the DCAA model schedule information eliminates any opportunity for further variation in proposal content.

Response: The information required from the contractor for an adequate indirect cost rate proposal is not new. No specific format is prescribed for the submission. This information is readily available in the contractor's books, records, and systems. DCAA has been the primary provider of information necessary for contracting officers to adequately perform their functions as stewards of public trust. Furthermore, the revised language "shall include the following data, unless otherwise specified by the cognizant Federal agency official" allows flexibility, depending on the circumstances of the contract (*e.g.,* size, complexity).

Comments: Four respondents submitted four comments objecting to the inclusion of one or more schedule items and stated that some of the information proposed to be required for an adequate submission is not necessary for an adequate contractor rate submission.

Response: The information required in the schedules is the minimum standard for an adequate indirect cost rate proposal. For example, the information in FAR 52.216–7(d)(2)(iii) item G, reconciliation of books of account and claimed direct costs, is necessary for an adequate submission and different from the information requested for item H, which is a schedule of direct costs by contract/subcontract and indirect expenses applied. The rule language does not require the reconciliation to be presented in a single schedule. An updated schedule (as specified in FAR 52.216–7(d)(2)(v)) is necessary to ensure timely adjustments to amounts claimed and billed by a contractor for the period covered by the final indirect cost rate determination.

Comment: One respondent states that "a requirement for the adequacy of an indirect cost rate submission that final direct costs must be submitted for audit is out of the scope of this clause" at FAR 52.216–7(g).

Response: This rule does not amend paragraph (g) of the clause at FAR 52.216–7, which has no bearing on the adequacy of an indirect cost rate submission as required by FAR 52.216–7(d)(2)(iii). The Government has the right to audit any invoice or voucher and statements of cost prior to final payment pursuant to FAR 52.216–7.

Comments: Two respondents submitted comments in regard to formatting. One respondent states that DCAA's insistence that data be converted into other formats (such as spreadsheets using DCAA's ICE Model) is in direct contradiction of FAR 52.215–2(d)(2) that access to records "may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law." The other respondent suggests that the proposed revision at FAR 42.705–1(b)(1) eliminates the suggestion in the current rule that contractors can use the DCAA model incurred cost rate proposal and supporting data for guidance on what constitutes an adequate final indirect cost rate proposal. According to the respondent, this proposed revision also refers the definition of adequacy to the revised clause at FAR 52.216–7(d)(2), which makes mandatory specific schedules and data requirements taken almost verbatim from the DCAA ICE Model.

Response: The information required from the contractor for an adequate indirect cost rate proposal is not new. No specific format is prescribed for the submission. This information should be readily available in the contractor's books, records, and systems.

Comment: One respondent states that the list of requirements proposed at FAR 52.216–7(d)(2) is contradictory to the definition of supporting documentation for final indirect cost rate proposals in the current FAR. According to FAR 31.201–2(d), supporting documentation means records necessary to demonstrate the costs claimed in the proposal have been incurred, are allocable to the contract, and comply with applicable cost principles. This makes clear the meaning of the current FAR 52.216–7(d), "The contractor shall support its proposal with adequate supporting documentation."

Response: The cost principles are not intended to set forth the submission requirements of an adequate indirect cost rate proposal.

Comment: One respondent states he does not believe that the proposed rule is in line with the FAR objective of achieving a timely settlement of final indirect rates. The rule delineates extensive requirements and supplemental data related to the description of an adequate final indirect cost rate proposal that are unnecessarily burdensome and largely irrelevant to indirect cost rate proposals. Levying requirements for the creation of new books and records as supporting documentation for costs is contradictory to existing provisions of FAR 52.215–2. The respondent is concerned that many of the proposed data requirements under the proposed rule have no connection to the indirect cost rates and may result in the unnecessary disclosure of proprietary information, *e.g.,* schedules O and L.

Response: The revisions to FAR 42.705–1 and FAR 52.216–7 are necessary to clarify the submission of an adequate indirect cost rate proposal. The information required is necessary for an adequate claim for cost. The supplemental information, if applicable, is what auditors expect to review in support of an adequate claim for cost. The proposed language "shall include

the following data, unless otherwise specified by the cognizant Federal agency official" allows flexibility depending on the circumstances of the contract (*e.g.* size, complexity). The information being requested should be readily available from the contractor's accounting system. The information is not new and the format of the information has not been designated for the contractor. The Government treats all audit information from contractors as confidential and protects it against all unauthorized disclosure.

Comment: One respondent states that the list of data required by FAR 52.216–7 (regardless of type of business, sector, or accounting system) is inconsistent and contradictory to FAR 42.705–1(b)(1)(i), which states that the "required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities." The final rule should afford contractors the flexibility to provide only that information necessary to support an indirect cost rate proposal.

Response: The information required from the contractor for an adequate indirect cost rate proposal is not new. No specific format is prescribed for the submission. This information is readily available in the contractor's books, records, and systems. DCAA has been the primary provider for information necessary for contracting officers to adequately perform their functions as stewards of the public trust.

Comment: One respondent takes exception to the statement in FAR 52.216–7(d)(2)(iv) that "The following supplemental information which will be required during the audit process * * *" and suggests it should be restated "the following supplemental information may be required * * *."

Response: The language has been revised to read "the following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process."

F. Indirect Cost Rate Proposal

The final rule implements the changes published in the proposed rule, without further amendments in response to the comments in this category.

Comment: One respondent states that the indirect cost rate proposal mandates at FAR 52.216–7 will result in an increase in proposal rejections, administrative costs and burden, and will significantly delay contract closeout.

Response: The information will provide uniformity, consistency, timeliness, and reduce the number of proposals being returned as inadequate.

Comment: One respondent agrees with the language to require a completion invoice to be submitted within 120 days after all rates have been settled for all years during a contract's period of performance and require inclusion of settled subcontract amounts and rates at FAR 52.216–7(d)(5) may assist in more timely completion of indirect cost audits and facilitate closeout. The respondent further agrees with the list set forth for an adequate indirect cost rate proposal.

Response: No response required.

Comment: One respondent states that timely closeout of subcontracts issued under a Government prime contract should be addressed and that contracting officers should be empowered and encouraged to unilaterally close out the prime contract, even if subcontracts have not been settled.

Response: The prime contractor is responsible for resolution of subcontract costs and rates prior to submission of final vouchers. FAR 52.216–7(d)(6)(i) allows the contracting officer to unilaterally close out a prime contract, when the contractor fails to submit a final voucher within 120 days.

G. Final Patent Report

The final rule implements the changes published in the proposed rule, without further amendments in response to the comments in this category.

Comment: One respondent states that if clearance by the contracting officer is not received within 60 days of receipt of the final patent report, the contract can be closed (FAR 4.804–5(a)(2)).

Two respondents recommend timelines be established (FAR 4.804–5). One respondent states that patent reports are seldom, if ever, cleared within 60 days and recommends timelines be established for both the contractor and legal community with finite time constraints to respond. The other respondent suggests establishing a time period for responding to the contracting officer's notification.

Response: The final rule provides for 60 days for the clearance of patent reports and allows for flexibility on a case-by-case basis. Any further clarification, if needed, should be provided in agency guidance.

Comment: One respondent suggests revising FAR 4.804–5(a)(2)(i) to read "Final Patent Reports, where no contractor invention is disclosed should be cleared within 60 days of receipt."

Response: The inclusion of the language "where no contractor invention is disclosed" is not necessary because the patent report may be cleared whether an invention is disclosed or not.

Comment: Two respondents concur with the proposed procedures for clearing final patent reports.

Response: Comment noted.

H. Payment Withhold

The final rule implements the changes published in the proposed rule, without further amendments in response to the comments in this category.

Comment: One respondent states that the rule, in regard to payment withholds, should allow the contracting officer to use their discretion regarding whether to withhold payment so that the provision is applied only when necessary.

Response: The institution of a uniform policy is more appropriate because the contracting officer will know what is required, as a minimum, for fee withholds for all contract types. This uniform policy will help to facilitate contract closeout by encouraging timely submission of final indirect cost rate proposals and final vouchers.

Comment: One respondent states that the retainage of a maximum of $100,000 is a good start, but for large contractors it is not much of a disincentive for the untimely submission of New Technology/Patent Reports and recommends the retainage be changed to 15 percent of the fee. This respondent also states that changes in the proposed rule may facilitate closeout; however, withholding of $100,000 in fee is insufficient to influence the actions of larger contractors.

Another respondent does not believe that the withhold changes in FAR 52.216–8, 52.216–9, and 52.216–10 are necessary; the changes should be rescinded; and, the current clauses remain in their current form.

Response: The intent of this FAR case is not to change the amount of the withholdings. The intent is to make the fee withholds mandatory, not optional, and to define an adequate indirect cost rate proposal.

Comments: Two respondents object to the allegedly arbitrary fee withholds that will negatively impact cash flow, harm the industrial base, and increase the amount of cancelled funds. Also, the other respondent states that the prescribed withholding of fee will result in contracting officers experiencing significant ongoing contract administration issues with expiring funds with no clear benefit.

Response: The intent of this FAR case is not to change the amount of the fee withholdings. The intent is to make the

fee withholds mandatory, not optional, and to define an adequate indirect cost rate proposal. The proposed rule does not change the current procedures in regard to expiring funds.

Comment: One respondent objects to making the proposed fee withholds mandatory because there are existing FAR provisions that already provide for fee withholds so no change is necessary. The combined effect of adding an exhaustive, ill fitting list of requirements for an adequate indirect cost rate proposal with mandatory fee withholds for inadequacy means that inevitable differences in interpreting the new rule will punish contractors unfairly and unilaterally. It is contrary to FAR 42.705–1(b) and could result in increases in the amount of cancelled funds.

Response: It is in the Government's best interest to set a uniform policy to establish mandatory fee withholds and define an adequate indirect cost rate proposal.

I. Quick-Closeout

The final rule includes amendments to FAR 42.708(a), in response to comments in this category.

Five respondents provided comments in this category.

Comment: One respondent welcomes the change at FAR 42.708(a) through (d) but requests clarification of direct costs to be allocated to a cost contract as direct costs are normally assigned/charged rather than allocated to contracts.

Response: The language is revised in FAR 42.708(a)(2) to read "unsettled direct costs and indirect costs to be allocated to the contract."

Comment: One respondent states that setting the limitation at FAR 42.708(a)(2)(i) to 20 percent is inconsistent with the historical intent of the provision to settle only an "insignificant" portion of the costs in advance of determination of final costs and rates. The respondent recommends a percentage of 10 or less.

Response: This rule changes the criteria for use of quick-closeout procedures from unsettled indirect rates on the contract as a percentage of total unsettled indirect costs, to both unsettled direct and indirect contract costs as a percentage of total claimed contract costs. The Councils believe this change expands the number of contracting actions, which will meet the criteria for quick-closeout. The limitation has been lowered from the proposed 20 percent to 10 percent of the total unsettled direct and indirect costs to be allocated to any one contract. The coverage is also revised in FAR 42.708(a)(2) to state that "Cost amounts will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order, do not exceed the lesser of (i) $1,000,000; or (ii) 10 percent of the total contract, task order, or delivery order amount." The Councils believe the percentage and monetary threshold should be lower because the lower percentage and dollar threshold will provide increased oversight and reduced risk to the government. The $1,000,000 threshold aligns with current inventories of physically-complete contracts that are amenable to use of quick-closeout procedures.

Comments: Three respondents comment that the proposed revisions limiting the use of quick-closeout procedures are counter-productive and will decrease their use. One respondent recommends adopting the Defense Contract Management Agency (DCMA) Class Deviation in FAR 42.703–1(b), 42.703–1(c)(2), and 42.708(a)(2) entitled "use of quick-closeout procedures for cost-reimbursement, fixed-price incentive, fixed-price redeterminable, and time-and-material contracts." Another respondent recommends deletion of the phrase "other concerns of the cognizant auditor" at FAR 42.708(a)(2)(i) in the risk assessment verbiage. The respondent also recommends that unsettled direct costs be defined.

Response: Previously, the FAR limited the use of quick-closeout procedures to instances where only indirect cost rates remain unsettled. This final rule allows the contracting officer to close contracts with unaudited direct costs and unsettled indirect cost rates. The intent of the rule is to increase the use of quick-closeout procedures for instances involving relatively insignificant amounts of unaudited costs under certain circumstances. DCMA's deviation does not allow the contracting officer to close out contracts without audit of all direct costs. The contracting officer's risk assessment plan includes coordination with the cognizant auditor. There is no need for a definition of "unsettled direct costs" because unsettled direct costs are identified on a case-by-case basis.

J. Timelines for the Government

The final rule implements the changes published in the proposed rule, without further amendments in response to the comments in this category.

Comment: One respondent states that the "provision at FAR 42.705–1(b)(ii) does not state a time limitation for the auditor to make a written determination of adequacy." Also, according to the respondent, time limitations should be established for completing audits.

Another respondent states that the Government needs to emphasize its role, including timely finalization of indirect rates, which includes DCAA completing audits of indirect costs proposals and administrative contracting officer's settling rates, signing off on reports, doing plant clearances, *etc.* Another respondent states that the rule does not define time requirements which all parties, not just contractors, must meet.

Response: Timelines should not be instituted for auditors to make a written determination of adequacy or for completion of audits, and for administrative contracting officers to settle rates, sign off on reports, do plant clearances, *etc.,* in order to ensure quality and allow flexibility, based on the size and complexity of each contract.

Comment: One respondent does not believe that the proposed rule will achieve any predictable reduction of time or resources associated with contract closeout.

Response: This rule clarifies the contract closeout process.

K. Regulatory Flexibility Act

Comments: One respondent questions the statement within the Regulatory Flexibility Act section of the preamble to the proposed rule that the rule is intended to "clarify and streamline" closeout procedures. The respondent further suggests that adoption of the DCAA Model Incurred Cost Proposal rate is not justified. Another respondent does not agree that the rule will not have a significant impact on a substantial number of small entities. The respondent believes that the numbers of schedules and the imposition of a six-month time constraint will have significant impact on small businesses. The third respondent also strongly disagrees with the conclusion that the proposed rule will not have a significant economic impact on a substantial number of small entities. Requiring preparation and submittal of DCAA's Model Indirect Cost Proposal rate and withholding fees, the proposed rule will have a significant economic impact on a substantial number of small entities. The respondent encourages the Councils to prepare and make available for public comment an initial regulatory flexibility analysis.

Response: Contractors are already required to support their indirect cost rate proposals with adequate supporting data. (See FAR 42.705–1(b).) No new requirement is imposed on contractors

by this rule. The changes to FAR parts 4 and 42 clarify and streamline closeout procedures. The model for an adequate indirect cost rate proposal is contained in the DCAA Model Incurred Cost Proposal rate. The data required in this model is not new to contractors nor is there evidence of any effect on small businesses when this information is required. In fact, because the information required is not new and the format of the information has not been designated for the contractor, this should be helpful to small businesses. The information being requested should be readily available from the contractor's accounting system. The inclusion of this information list should improve consistency, efficiency, and timeliness in contractor submissions. The clauses at FAR 52.216–8, 52.216–9, and 52.216–10 are being changed to make the reserve mandatory. However, the reserve amount set aside in the proposed rule has not changed. No small businesses commented on the changes to the clauses at FAR 52.216–8, 52.216–9, and 52.216–10 as published in the proposed rule. Therefore, the Councils conclude that this change will not have a significant impact on small businesses.

L. Paperwork Reduction Act

Comments: Several respondents disagree with the preamble to the proposed rule, which stated that the proposed changes to the FAR would not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB). According to one respondent, mandating preparation and submittal of DCAA's model indirect cost rate proposal for every contract that requires an indirect cost rate proposal will significantly increase the paperwork burdens.

Response: No new requirement is imposed on contractors by this proposed rule. The schedules now contained in FAR 52.216–7(d) require the same information previously cited in FAR 42.705–1(b). FAR 42.705–1(b) requires contractors to submit an adequate final indirect cost rate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. This requirement is contained in OMB Clearance 9000–0013. The clause at FAR 52.216–7, Allowable Cost and Payment, is covered by OMB Clearance 9000–0069. The clause at FAR 52.216–10, Incentive Fee, is covered by OMB Clearance 9000–0067.

M. General

There are no revisions to the FAR based on this comment category.

Comment: One respondent inquires as to why the FAR case and new clause are limited to DoD, GSA, and NASA and that other civilian agencies would benefit from the new streamlined procedures as well.

Response: By law, 41 U.S.C. 1302 (formerly 41 U.S.C. 421(b)), DoD, GSA, and NASA are the signatories of the FAR. GSA signs on behalf of all the other civilian agencies that are subject to the FAR except NASA. The final rule is applicable Government-wide to those executive agencies under the Federal Acquisition Regulations System.

Comment: One respondent recommends that "contracting officers should be encouraged to unilaterally de-obligate cancelling funds as an administrative action without fear of violating anti-deficiency or other contracting protocols."

Another respondent recommends that a timeframe should be targeted for the replacement of cancelled funds.

Response: These comments on funding are outside the scope of this case.

Comments: Two respondents question the application of this rule to the FAR guiding principles in FAR 1.102.

Response: This guidance helps to clarify the requirements of an adequate submission of an indirect cost rate proposal. The guidance for the proper submission of an adequate indirect cost rate proposal is provided to contractors in the clause at FAR 52.216–7. The inclusion of this list of information should help to provide consistency, efficiency, and more timely submission.

N. Summary of Changes

The Councils made the following changes to the FAR as a result of the public comments:

1. Revised FAR 42.705–1(b)(1) to be consistent with language at FAR 52.216–7(d)(2).

2. Revised FAR 42.705–1(b) and 42.705–2(b)(2) to clarify the role of the auditor.

- The term "determination" was removed from proposed 42.705–1(b)(1)(ii);
- FAR 42.705–1(b)(1)(iii), 42.705–1(b)(2), and 42.705–2(b) clarify that the auditor—
  - Reviews the proposal for adequacy and provides the findings of inadequacy to the contractor and contracting officer; and
  - Prepares an advisory audit report, after the proposal has been determined to be adequate for audit.

3. Revised FAR 42.708(a)(2) to lower the percentage limitation in the existing quick-closeout criteria. FAR 42.708 (a)(2)(i) dollar limitation reverts to $1,000,000, instead of $4,000,000 in the proposed rule. Renumbered FAR 42.708(a)(3) as FAR 42.708(a)(4) and added a new paragraph FAR 42.708(a)(3). Provided examples of other pertinent information at new paragraph FAR 42.708(a)(3)(iii).

4. Revised FAR 52.216–7(d)(2)(iii) to further illustrate the data.

5. Revised FAR 52.216–7(d)(2)(iv) to clarify that the supplemental information listed, although it may not be required for a determination on the adequacy of the contractor's proposal, may be required during the audit process.

6. Revised FAR 52.216–7(d)(2)(iii) and (d)(2)(iv) to clarify items provided for adequate final indirect cost rate proposal at FAR 52.216–7(d)(2)(i).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses. The changes to FAR parts 4 and 42 clarify and streamline closeout procedures. The changes to the clauses at FAR 52.216–8, 52.216–9, and 52.216–10 allow for a reserve to be set-aside to protect the Government's interest. Contracting Officers already may set aside a reserve under current FAR procedures.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under the following:

- OMB Control Number 9000–0013, titled: Cost or Pricing Data Requirements Information Other Than Cost or Pricing Data;
- OMB Control Number 9000–0067, titled: Incentive Contract; and
- OMB Control Number 9000–0069, titled: Indirect Cost Rates.

List of Subjects in 48 CFR Parts 4, 42, and 52

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.804–5 by revising paragraph (a)(2) to read as follows.

4.804–5 Procedures for closing out contract files.

(a) * * *

(2) *Final patent report is cleared.* If a final patent report is required, the contracting officer may proceed with contract closeout in accordance with the following procedures, or as otherwise prescribed by agency procedures:

(i) Final patent reports should be cleared within 60 days of receipt.

(ii) If the final patent report is not received, the contracting officer shall notify the contractor of the contractor's obligations and the Government's rights under the applicable patent rights clause, in accordance with 27.303. If the contractor fails to respond to this notification, the contracting officer may proceed with contract closeout upon consultation with the agency legal counsel responsible for patent matters regarding the contractor's failure to respond.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 3. Amend section 42.705–1 by revising paragraphs (b)(1) and (b)(2) to read as follows:

42.705–1 Contracting officer determination procedure.

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216–7, the contractor is required to submit an adequate final indirect cost rate proposal to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor.

(i) The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible.

(ii) Each contractor is required to submit the final indirect cost rate proposal within the six-month period following the expiration of each of its fiscal years. The contracting officer may grant, in writing, reasonable extensions, for exceptional circumstances only, when requested in writing by the contractor.

(iii) Upon receipt of the proposal—

(A) The cognizant auditor will review the adequacy of the contractor's proposal for audit in support of negotiating final indirect cost rates and will provide a written description of any inadequacies to the contractor and contracting officer.

(B) If the auditor and contractor are unable to resolve the proposal's inadequacies identified by the auditor, the auditor will elevate the issue to the contracting office to resolve the inadequacies.

(iv) The proposal must be supported with adequate supporting data, some of which may be required subsequent to finding that the proposal is adequate for audit in support of negotiating final indirect cost rates (*e.g.,* during the course of the performance of the advisory audit). See the clause at 52.216–7(d)(2) for the description of an adequate final indirect cost rate proposal and supporting data.

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor will audit the proposal and prepare an advisory audit report to the contracting officer (or cognizant Federal agency official), including a listing of any relevant advance agreements or restrictive terms of specific contracts.

* * * * *

■ 4. Amend section 42.705–2 by—

■ a. Revising the introductory text of paragraph (b)(2) and (b)(2)(i); and

■ b. Redesignating paragraphs (b)(2)(ii) through (iv) as paragraphs (b)(2)(iii) through (v), respectively; and adding a new paragraph (b)(2)(ii) to read as follows:

42.705–2 Auditor determination procedure.

* * * * *

(b) * * *

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor shall—

(i) Audit the proposal and prepare an advisory audit report, including a listing of any relevant advance agreements or restrictive terms of specific contracts;

(ii) Seek agreement on indirect costs with the contractor;

* * * * *

■ 5. Amend section 42.708 by revising paragraph (a) to read as follows:

42.708 Quick-closeout procedure.

(a) The contracting officer responsible for contract closeout shall negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed, in advance of the determination of final direct costs and indirect rates set forth in 42.705, if—

(1) The contract, task order, or delivery order is physically complete;

(2) The amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is relatively insignificant. Cost amounts will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order does not exceed the lesser of—

(i) $1,000,000; or

(ii) 10 percent of the total contract, task order, or delivery order amount;

(3) The contracting officer performs a risk assessment and determines that the use of the quick-closeout procedure is appropriate. The risk assessment shall include—

(i) Consideration of the contractor's accounting, estimating, and purchasing systems;

(ii) Other concerns of the cognizant contract auditors; and

(iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate

structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and

(4) Agreement can be reached on a reasonable estimate of allocable dollars.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.216–7 by—
■ a. Revising the date of the clause;
■ b. Adding paragraphs (d)(2)(iii) through (d)(2)(v); and
■ c. Adding two sentences to the end of paragraph (d)(5) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (JUN 2011)

* * * * *

(d) * * *

(2) * * *

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e.,* General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) *Subcontract information.* Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242–4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General Organizational information and Executive compensation for the five most highly compensated executives. See 31.205–6(p). Additional salary reference information is available at *http://www.whitehouse.gov/omb/procurement_index_exec_comp/.*

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.,* trial balance, compilation, review, *etc.*).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10–K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

* * * * *

(5) * * * The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

* * * * *

■ 7. Amend section 52.216–8 by revising the date of the clause and paragraph (b) to read as follows:

52.216–8 Fixed Fee.

* * * * *

Fixed Fee (JUN 2011)

* * * * *

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

* * * * *

■ 8. Amend section 52.216–9 by revising the date of the clause and paragraph (c) to read as follows:

52.216–9 Fixed Fee—Construction.

* * * * *

Fixed Fee—Construction (JUN 2011)

* * * * *

(c) The Contracting Officer shall withhold a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent

and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

* * * * *

■ 9. Amend section 52.216–10 by revising the date of the clause and paragraph (c) to read as follows:

52.216–10 Incentive Fee.

* * * * *

Incentive Fee (JUN 2011)

* * * * *

(c) *Withholding of payment.* (1) Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

(2) Payment of the incentive fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total incentive fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

* * * * *

[FR Doc. 2011–12852 Filed 5–27–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 9, and 52

[FAC 2005–52; FAR Case 2008–009; Item III; Docket 2009–0020, Sequence 1]

RIN 9000–AL28

Federal Acquisition Regulation; Prohibition on Contracting With Inverted Domestic Corporations

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 743 of Division D of the Omnibus Appropriations Act, 2009. Section 743 of Division D of this Act prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one. For Fiscal Year (FY) 2010, the same restrictions were continued under section 740 of Division C of the Consolidated Appropriations Act, 2010.

DATES: *Effective Date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202, for clarification of content. Please cite FAC 2005–52, FAR Case 2008–009. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 74 FR 31561 on July 1, 2009, to implement section 743 of the Division D of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8). Section 743 of Division D of this Act prohibited the use of Federal appropriated funds for FY 2009 to contract with any inverted domestic corporation, as defined at section 835(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 6 U.S.C. 395(b)), or any subsidiary of such an entity. On December 16, 2009, section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), also prohibited the use of Federal appropriated funds for FY 2010. Eight respondents submitted comments on the interim rule.

II. Discussion and Analysis of the Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Applicability to Fiscal Years (FY) 2006 and 2007 Funds

Comment: Three respondents commented that the interim rule inaccurately applies the ban on contracting with inverted domestic corporations to funds appropriated in FY 2006 and FY 2007 on a Governmentwide basis. Section 743 of Division D of the Omnibus Appropriations Act, 2009, and section 745 of the Consolidated Appropriations Act, 2008, prohibit all Federal agencies from using appropriated funds on contracts with any foreign incorporated entity that is treated as an inverted domestic corporation or the subsidiary of such a corporation. In FY 2006 and FY 2007, the statutory prohibition was limited to agencies funded under the Treasury, Transportation and Housing Appropriation (Pub. L. 109–115, Pub. L. 109–289, Pub. L. 109–369, Pub. L. 109–383, and Pub. L. 110–5).

Response: The Councils agree with the respondents that the prohibition in the FY 2006 and FY 2007 appropriations bills only covers a limited number of agencies, whereas the FY 2008 and FY 2009 prohibition applies Governmentwide. The Councils therefore have revised FAR 9.108–3 to apply the prohibition to the use of FY 2008 and FY 2009 appropriated funds. The Councils recommend that each covered agency continue with its implementation of the FY 2006 and FY 2007 prohibitions because the required implementation has probably already occurred within the covered agencies.

B. Applicability to Task Orders

Comment: One respondent commented that the interim rule fails to reflect a statutory exception for funds expended on task orders issued under contracts entered into before December 26, 2007. Section 743(c) of Division D of the Omnibus Appropriations Act, 2009, and section 745(c) of Division D of Public Law 110–161 (the Consolidated Appropriations Act, 2008) each provide that "This section shall not apply to any

Federal Government contract entered into before the date of the enactment of this Act, or to any task order issued pursuant to such contract."

Response: The Councils agree with the respondent. The Councils have revised FAR 9.108–2 to specify the exclusion of contracts entered into before December 26, 2007, (for FY 2008 funds); March 11, 2009, (for FY 2009 funds); and December 16, 2009, (for FY 2010 funds); and task orders issued under such contracts.

C. Definitions

1. Inverted Domestic Corporation

Comment: Three respondents opined that the incorporation of the Internal Revenue Code (IRC) definition of "inverted domestic corporation" broadened the definition of the term beyond the intent of Congress as the definitions are not the same. They stated rulemaking on inverted domestic corporations should be based on the definition in the Homeland Security Act of 2002 rather than the IRC as Congress did not incorporate the IRC definition into any contracting ban.

Response: The Homeland Security Act of 2002 and IRC definitions are not identical. To simplify and avoid complicating the application of the inverted domestic corporation prohibition, the Councils have—

- Deleted FAR 9.108–2, Relationship with the Internal Revenue Code and Treasury regulations;
- Added to the definition of "inverted domestic corporation;"
- Changed the content of FAR 52.209–2(b), Relation to Internal Revenue Code; and
- Changed FAR 52.212–3(n)(1), Relation to Internal Revenue Code.

Thus, the inverted domestic corporation prohibition will be implemented with the Homeland Security Act of 2002 definition stating explicitly that it is not the same as the IRC definition.

2. Subsidiary

Comment: One respondent stated that failure to define the term "subsidiary" will result in inconsistent application of the FAR rule. The respondent contended that this will cause problems for potential Government contractors as well as contracting officers.

The respondent first proposed that the legislative history suggests that Congress intended the prohibition to apply to "wholly-owned subsidiaries." The respondent stated that the impetus for expanding the prohibition to cover subsidiaries was to "plug a loophole" that became apparent when an award was made to a wholly-owned subsidiary of a foreign entity.

Alternatively, as the less preferred option, the respondent made a case for defining subsidiary in accordance with the tax code. The respondent cites both 6 U.S.C. 395 and 26 U.S.C. 7874, because they both require 80 percent ownership of stock in the foreign entity by former shareholders of the domestic corporation in order for the foreign entity to be designated as an inverted domestic corporation.

Response: The Councils concur that the rule should provide a definition of the term "subsidiary." In general terms, a subsidiary is an entity that is controlled by a separate entity, called the parent company. The most common way (but not the only way) that control of a subsidiary is achieved is through ownership of shares (or other form of ownership if not a corporation) in the subsidiary by the parent. Subsidiaries are separate distinct legal entities for the purposes of taxation and regulation.

The Councils do not agree with the respondent's request to have "subsidiary" defined as "wholly-owned subsidiary." This position is not supported in any of the research or current IRC. The respondent provided no citation to substantiate their request of defining subsidiary to mean wholly-owned subsidiary. Further, the words "wholly-owned," which denote a specific type of subsidiary, are not used in either of the two cited statutes. The fact that a particular instance involving a wholly-owned subsidiary occurred, does not mean that Congress intended to limit application to wholly-owned subsidiaries.

The Councils have defined "Subsidiary," as used in this rule, to mean an entity (or corporation) in which more than 50 percent is owned—

(1) Directly by a parent company; or

(2) Through another subsidiary of a parent company.

The definition revolves around the idea of management control and the financial interests of the parent company. Any single entity that controls greater than 50 percent of the stock (or assets of a non-public company) would essentially be able to control and benefit from the operations of the second entity. This option interprets the legislation's intent as wanting to prevent inverted domestic corporations from receiving the revenue benefit from Federal contracts. With a greater than 50 percent ownership within a subsidiary, the inverted domestic corporation would receive the majority of the benefit. This interpretation has grounding in the current IRC. Section (c)(1) of 26 U.S.C. 7874 states that expanded affiliated groups (a corporation or chain of corporations which are connected to a parent corporation through stock ownership) of foreign surrogates need only own 50 percent of the stock of the company instead of the normal 80 percent.

The mention of stock ownership as the measuring criteria was replaced in favor of a broader term of overall ownership in order to cover private companies.

In making the case for the 80 percent ownership interpretation, the respondent cited both 6 U.S.C. 395 and 26 U.S.C. 7874. Both sections of the United States Code are meant to provide the thresholds for determining whether a corporation is an inverted domestic corporation and not whether a corporation is a subsidiary. The Councils did not agree that it is correct to use the threshold for determining an inverted domestic corporation as the threshold for determining a subsidiary as they are two separate and different determinations. The IRC (26 U.S.C. 1563) does describe parent-subsidiary relationships using the 80 percent threshold, but only for filing consolidated returns.

D. Trade Agreements

Comment: One respondent argued that the application of section 743 of Division D to products, services, or suppliers of a party to the World Trade Organization Government Procurement Agreement (WTO GPA) or a party to a U.S. free trade agreement would be inconsistent with the non-discrimination obligations in those agreements. This respondent proposed that the final rule should be changed so that it does not apply to inverted domestic corporations or U.S. subsidiaries of inverted domestic corporations that have relocated from the United States to countries that are parties to the WTO GPA or U.S. free trade agreements.

Response: The Councils have considered the respondent's arguments regarding the compatibility of section 743 with U.S. trade agreement obligations. The Councils do not consider that the application of section 743 to products, services, or suppliers of a party to the WTO GPA or a party to a U.S. free trade agreement, or to the U.S. subsidiaries of such suppliers, would be inconsistent with the non-discrimination obligations in those agreements. Furthermore, section 743 does not provide for drawing distinctions of the kind the respondent has proposed. Therefore, the Councils

do not believe it is appropriate to make this revision.

E. Scope of the Representation

Comment: One respondent requested that the FAR Councils clarify the certification requirement set forth in FAR 52.209–2. Specifically, the comment requested that we clarify the following points:

(1) Whether a business that was previously an inverted domestic corporation, but no longer one at the time of initial offer, would be eligible for contract award; and

(2) Whether an awardee can become an inverted domestic corporation during performance of the contract.

The respondent stated that the Councils should not limit an awardees' ability to become an inverted domestic corporation during performance of the contract because it would be an overly broad interpretation and would unfairly punish the shareholders.

Response: The Councils agree that the representation (it is not a certification, but a representation) requires additional clarification. In addition, the Councils agree that a former inverted domestic corporation could be eligible for award of a contract if it is no longer an inverted domestic corporation at the time of initial offer. However, the statute prohibits the expenditure of funds to an awardee that becomes an inverted domestic corporation during contract performance.

Specifically, the public laws at issue in this rule state that "None of the funds appropriated * * * may be used for any Federal Government contract with * * * an inverted domestic corporation * * *" see Public Law 111–117, section 740. This would mean that a company could not be an inverted domestic corporation at the time of initial offer, contract award, or any time after. If a corporation receives a contract and during contract performance becomes an inverted domestic corporation, then payment using restricted funds may constitute a violation of the Anti-Deficiency Act. Consequently, the Councils have added a clause at FAR 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, to inform a contractor of the potential consequences if the contractor becomes an inverted domestic corporation or a subsidiary thereof at any time during the period of performance of the contract.

F. Procedures for Determining Status as an Inverted Domestic Corporation

Background: FAR 9.108–3(b) of the interim rule stated that contracting officers "should rigorously examine circumstances known to them that would lead a reasonable business person to question the contractor self-certification, and after consultation with legal counsel, take appropriate action where questionable self-certification cannot be verified."

Further, the **Federal Register** preamble to the interim rule states that "the appropriation restriction applies to accountable Government officers, and if willfully and knowingly violated, may result in criminal penalties."

Comments: Two respondents commented on the procedures for the contracting officer to determine the validity of an offeror's representation regarding status as an inverted domestic corporation. These respondents have several concerns—that these procedures place undue burdens on contracting officers, that different contracting officers will reach inconsistent conclusions about a single offeror, and that the **Federal Register** preamble cites potential criminal penalties.

One respondent stated that the procedure is inefficient because it places the burden of determination on many contracting officers. The respondent stated that contracting officers are not in the best position to make the determination. Both respondents were concerned that many different contracting officers may reach multiple conclusions regarding a single contractor.

One respondent commented that it is an "unusual step to identify potential criminal penalties for contracting officers to adequately review contractor's certifications." The other respondent stated that there is no basis for the threat of criminal penalties in the appropriations restrictions.

Response: The Councils concur with the comments on the first issue. The Councils have revised FAR 9.108–3(b) as follows:

> "The contracting officer may rely on an offeror's representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation."

This is a lesser standard than "rigorously examine," but the contracting officer should not ignore information that provides a valid reason to question (including the challenge of an interested party). The provisions of the Anti-Deficiency Act would not allow contracting officers to rely solely on a representation in the face of contradictory evidence. The representation is to prevent violating restrictions on expenditure of funds which would trigger the Anti-Deficiency Act. This approach is similar to the direction to contracting officers with regard to the representation offerors make regarding small business status.

The Councils note that the basis for mention of criminal penalties in the **Federal Register** preamble was because knowing and willful violation of the Anti-Deficiency Act (31 U.S.C. 1341) is a criminal offense (31 U.S.C. 1350) subject to criminal penalties. The **Federal Register** did not state that there would be criminal penalties for failure to "adequately review" the offeror's representation but only cited potential criminal penalties if the appropriations act restriction is "knowingly and willfully violated."

G. Flowdown

Comments: Two respondents commented on the question of whether the prohibition against contracting with an inverted domestic corporation should be flowed down to subcontractors. The interim rule did not require flowdown and requested comments on the issue. One respondent commented that silence puts a prime contractor at risk of cost disallowances if a subcontractor is subsequently found to be an inverted domestic corporation, *i.e.,* the Government might disallow subcontractors' expenditures of restricted fiscal years' monies.

On the other hand, a second respondent made a strong case that Congress would have specifically asked for flowdown in the statute if it wanted the requirement to apply to subcontractors. The absence of any mention of subcontractors in the statute, according to the respondent, means that Congress did not want the prohibition to apply to subcontractors.

Response: Given the plain wording of the statute and the comments received on this subject, the Councils have determined that it is not appropriate to include a flow down requirement in this rule.

H. Interim v. Proposed Rule

Comments: Four respondents commented on the decision to issue an interim rule, which is effective immediately, instead of a proposed rule, which does not have an immediate impact. The respondents generally posit that the mere fact that there is currently a prohibition in statute prohibiting contracting with inverted domestic corporations does not justify a claim of "urgent and compelling circumstances." A respondent stated that the fact that the prohibitions had existed in appropriations laws for several years before the interim rule was issued did not justify the claimed urgency. This respondent cited *Atchison, Topeka &*

Santa Fe Ry. Co. v. *Wichita Bd. Of Trade,* 412 U.S. 800, 808 (1973), in which the Supreme Court stated that any grounds for departure from prior norms "must be clearly set forth so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate." This respondent claimed that the Councils did not make a reasonable explanation for why they did not initiate a rulemaking for identical or substantially similar statutory restrictions dating back several years.

The respondent quotes from the Office of Federal Procurement Policy Act section 418b(a) that "no procurement policy, regulation, procedure, or form * * * may take effect until 60 days after (it) is published for comment in the **Federal Register**" and then states that the 60-day notice may only be waived "if urgent and compelling circumstances make compliance with such requirements impracticable."

Another respondent suggested that an interim rule was improper because it risked harming shareholders who had no role in deciding to shift a company offshore and also risked contracting officers reaching disparate conclusions. For these reasons, and the reasons discussed above, the respondents requested suspension of the interim rule.

Response: The restrictions against contracting with inverted domestic corporations in Fiscal Years 2006 and 2007 were not applicable to all Government agencies. The FAR coverage was not required for the non-Governmentwide prohibition in those fiscal years. However, the inverted domestic corporation language in the Fiscal Years 2008, 2009, and 2010 appropriations law is applicable Governmentwide, thus making it an appropriate subject for FAR coverage. The Councils do not agree that the FAR Council lacked authority to issue the coverage as an interim rule; the rule implemented an existing restriction on appropriations about which contracting officers and ordering activities may have been unaware. The Councils cannot suspend the interim rule because it may harm shareholders. The Councils are obligated to implement the statutory restriction on contracting with inverted domestic corporations.

I. Permanent Response to Temporary Legislation

Comments: Two respondents claimed that a restriction included in an appropriations bill does not equate to a permanent restriction, whereas the Councils have responded with regulations that are permanent. The respondents believed that this "permanent" FAR language is not a proper reaction to statutes restricting use of appropriations in a given fiscal year, particularly because inevitable variations in future years' appropriations limitations on contracting with inverted domestic corporations are likely to make regulatory changes still more complicated.

Response: The Councils do not agree that this is in fact permanent coverage, because the prohibition is tied to the expenditure of specific year funds and is self-deleting over time. There is no other readily accessible means for this information to get to the contracting officers who must implement the contracting restriction.

J. Editorial Comments

Two respondents made several editorial comments, which have been incorporated as appropriate in the final rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. The number of entities impacted by this rule will be minimal because small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a foreign country; the major players in these transactions are reportedly the very large multinational corporations. No comments were received relating to impact on small business concerns.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 9, and 52

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Accordingly, the interim rule amending 48 CFR parts 4, 9, and 52, which was published in the **Federal Register** at 74 FR 31561 on July 1, 2009, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 4, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by removing paragraph (f); redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(e) 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.104–1 [Amended]

■ 3. Amend section 9.104–1 by removing the word "FAR" from paragraph (g).

■ 4. Revise sections 9.108–1 through 9.108–5 to read as follows:

9.108–1 Definitions.

As used in this section—

Inverted domestic corporation means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.,* a corporation that used to be incorporated in the United States, or used to be a partnership in the United

States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

Subsidiary means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

9.108–2 Prohibition.

(a) Section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) prohibits the use of 2010 appropriated funds for contracting with any foreign incorporated entity that is treated as an inverted domestic corporation, or with a subsidiary of such a corporation. The same Governmentwide restriction was also contained in the Fiscal Year 2008 and 2009 appropriations acts. Agency-specific restrictions on contracting with inverted domestic corporations also existed in FY 2006 and FY 2007 appropriations for United States Departments of Transportation and Treasury, Housing and Urban Development, the Judiciary and Independent Agencies (including Public Laws 109–115 and 109–289).

(b) This prohibition does not apply as follows:

(1) When using Fiscal Year 2008 funds for any contract entered into before December 26, 2007, or for any order issued pursuant to such contract.

(2) When using Fiscal Year 2009 funds for any contract entered into before March 11, 2009, or for any order issued pursuant to such contract.

(3) When using Fiscal Year 2010 funds for any contract entered into before December 16, 2009, or for any order issued pursuant to such contract.

9.108–3 Representation by the offeror.

(a) In order to be eligible for contract award when using Fiscal Year 2008 through Fiscal Year 2010 funds, an offeror must represent that it is not an inverted domestic corporation or subsidiary. Any offeror that cannot so represent is ineligible for award of a contract using such appropriated funds.

(b) The contracting officer may rely on an offeror's representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation.

9.108–4 Waiver.

Any agency head may waive the prohibition in subsection 9.108–2 and the requirement of subsection 9.108–3 for a specific contract if the agency head determines in writing that the waiver is required in the interest of national security, documents the determination, and reports it to the Congress.

9.108–5 Solicitation Provision and Contract Clause.

When using funds appropriated in Fiscal Year 2008 through Fiscal Year 2010, unless waived in accordance with FAR 9.108–4, the contracting officer shall—

(a) Include the provision at 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations—Representation, in each solicitation for the acquisition of products or services (including construction); and

(b) Include the clause at 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, in each solicitation and contract for the acquisition of products or services (including construction).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.204–8 by—

■ a. Revising the date of the provision; and

■ b. Redesignating paragraphs (c)(1)(v) through (xx) as paragraphs (c)(1)(vi) through (xxi), respectively; and adding a new paragraph (c)(1)(v) to read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (May 2011)

(c)(1) * * *

(v) 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, or 2010.

* * * * *

■ 6. Revise section 52.209–2 to read as follows:

52.209–2 Prohibition on Contracting With Inverted Domestic Corporations—Representation.

As prescribed in 9.108–5(a), insert the following provision:

Prohibition on Contracting With Inverted Domestic Corporations—Representation (May 2011)

(a) *Definitions. Inverted domestic corporation* and *subsidiary* have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations (52.209–10).

(b) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

(c) *Representation.* By submission of its offer, the offeror represents that—

(1) It is not an inverted domestic corporation; and

(2) It is not a subsidiary of an inverted domestic corporation.

(End of provision)

■ 7. Add section 52.209–10 to read as follows:

52.209–10 Prohibition on Contracting With Inverted Domestic Corporations.

As prescribed in 9.108–5(b), insert the following clause:

Prohibition on Contracting With Inverted Domestic Corporations (May 2011)

(a) *Definitions.* As used in this clause—

Inverted domestic corporation means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.,* a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

Subsidiary means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)

■ 8. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. In paragraph (a) revising the definition "Inverted domestic corporation"; and adding, in alphabetical order, the definition "Subsidiary"; and

■ c. Revising paragraph (n) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (May 2011)

* * * * *

(a) * * *

* * * * *

Inverted domestic corporation, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.,* a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

* * * * *

Subsidiary means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

* * * * *

(n) *Prohibition on Contracting with Inverted Domestic Corporations*—(1) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

(2) *Representation.* By submission of its offer, the offeror represents that—

(i) It is not an inverted domestic corporation; and

(ii) It is not a subsidiary of an inverted domestic corporation.

* * * * *

■ 9. Amend section 52.212–5 by revising the date of the clause; redesignating paragraphs (b)(7) through (48) as (b)(8) through (49), respectively; and adding a new paragraph (b)(7) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (May 2011)

* * * * *

(b) * * *

__(7) 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations (section 740 of Division C of Public Law 111–117, section 743 of Division D of Public Law 111–8, and section 745 of Division D of Public Law 110–161)

* * * * *

[FR Doc. 2011–12853 Filed 5–27–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–52; FAR Case 2009–039; Item IV; Docket 2010–0104, Sequence 1]

RIN 9000–AL62

Federal Acquisition Regulation; Buy American Exemption for Commercial Information Technology—Construction Material

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010, to authorize exemption from the Buy American Act for acquisition of information technology that is a commercial item.

DATES: *Effective Date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–52, FAR Case 2009–039.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60266 on September 29, 2010, to implement section 615 of the Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). No comments were received by the close of the public comment period on November 29, 2010.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule simplifies the treatment of construction material that is also a commercial information technology item, which constitutes a small percentage of the overall construction material in a project. This final rule does not affect small business set-asides to the prime contractor or the small business subcontracting goals. Construction contracts that exceed $7,804,000 and are subject to trade agreements already exempt designated country construction material from the Buy American Act.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0141, titled: Buy America Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 75 FR 60266 on September 29, 2010, is adopted as final without change.

[FR Doc. 2011–12854 Filed 5–27–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAC 2005–52; FAR Case 2010–017; Item V; Docket 2010–0017, Sequence 1]

RIN 9000–AL92

Federal Acquisition Regulation; Oversight of Contractor Ethics Programs

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add to the list of contract administration functions, the function to ensure that contractors have implemented the mandatory contractor business ethics program requirements.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, at (202) 501–2658, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–52, FAR Case 2010–017.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the FAR in response to recommendations from the Government Accountability Office (GAO) Report GAO–09–591, Defense Contracting Integrity—Opportunities Exist to Improve DoD's Oversight of Contractor Ethics Programs. The ethics program requirement flows from FAR 52.203–13, Contractor Code of Business Ethics and Conduct.

This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function to ensure that contractors have implemented the mandatory contractor business ethics program requirements of FAR 52.203–13.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707. However, DoD, GSA, and NASA will consider comments from small entities concerning the affected FAR part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610, *et seq.* (FAC 2005–52, FAR Case 2010–017) in correspondence.

IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 42 as set forth below:

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 42.302 by adding paragraph (a)(71) to read as follows:

42.302 Contract administration functions.

(a) * * *

(71) Ensure that the contractor has implemented the requirements of 52.203–13, Contractor Code of Business Ethics and Conduct.

* * * * *

[FR Doc. 2011–12855 Filed 5–27–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 52 and 53

[FAC 2005–52; Item VI; Docket 2011–0078; Sequence 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

DATES: *Effective Date:* May 31, 2011.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street, NE., 7th Floor, Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–52, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 52 and 53, this document makes editorial changes to the Federal Acquisition Regulation.

List of Subjects in 48 CFR Parts 52 and 53

Government procurement.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 52 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–3 [Amended]

■ 2. Amend section 52.212–3 by—

■ a. Removing from paragraphs (c)(6)(i) and (ii), and (c)(7)(i) and (ii) "It * is, * is not" and adding "It □ is, □ is not" in their place; and

■ b. Removing from paragraph (c)(7)(ii) "(c)(7)(ii)" and adding "(c)(7)(i)" in its place.

PART 53—FORMS

■ 3. Amend section 53.301–1447 by revising the form to read as follows:

53.301–1447 Solicitation/Contract.

BILLING CODE 6820–EP–P

SOLICITATION/CONTRACT BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. SOLICITATION NUMBER	5. SOLICITATION TYPE	6. SOLICITATION ISSUE DATE
			☐ SEALED BIDS (IFB) ☐ NEGOTIATED (RFP)	

7. ISSUED BY	CODE	8. THIS ACQUISITION IS ☐ UNRESTRICTED OR ☐ SET ASIDE: % FOR:
NO COLLECT CALLS		☐ SMALL BUSINESS ☐ HUBZONE SMALL BUSINESS ☐ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS ☐ 8(A) ☐ WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM ☐ ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) NAICS: SIZE STANDARD:

9. (AGENCY USE)

10. ITEMS TO BE PURCHASED *(BRIEF DESCRIPTION)*

☐ SUPPLIES ☐ SERVICES

11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.	12. ADMINISTERED BY CODE
13. CONTRACTOR OFFEROR CODE _____ FACILITY CODE TELEPHONE NUMBER _____ DUNS NUMBER _____ ☐ CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER	14. PAYMENT WILL BE MADE BY CODE SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK:
15. PROMPT PAYMENT DISCOUNT	16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION ☐ 10 U.S.C. 2304 ( ) ☐ 41 U.S.C. 253 ( )

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA	24. TOTAL AWARD AMOUNT *(FOR GOVERNMENT USE ONLY)*

25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.	26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:
27. SIGNATURE OF OFFEROR/CONTRACTOR	28. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*
NAME AND TITLE OF SIGNER *(TYPE OR PRINT)* / DATE SIGNED	NAME OF CONTRACTING OFFICER / DATE SIGNED

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STANDARD FORM 1447 (REV. 5/2011)
Prescribed by GSA - FAR (48 CFR) 53.214(d)

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
	OTHER *(Specify)*		
	WE DO		WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEMS INVOLVED

NAME AND ADDRESS OF FIRM *(Include Zip Code)*	SIGNATURE
	TYPE OR PRINT NAME AND TITLE OF SIGNER

FROM:

AFFIX STAMP HERE

TO:

SOLICITATION NO. _____

DATE AND LOCAL TIME _____

STANDARD FORM 1447 (REV. 5/2011) **BACK**

■ 4. Amend section 53.301–1449 by revising the form to read as follows:

§ 53.301–1449 Solicitation/Contract/Order for Commercial Items.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS *OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30*			1. REQUISITION NUMBER	PAGE 1 OF
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE
7. FOR SOLICITATION INFORMATION CALL:	a. NAME		b. TELEPHONE NUMBER *(No collect calls)*	8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY	CODE	10. THIS ACQUISITION IS ☐ UNRESTRICTED OR ☐ SET ASIDE: % FOR: ☐ SMALL BUSINESS ☐ HUBZONE SMALL BUSINESS ☐ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS ☐ WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM ☐ ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) ☐ 8 (A) NAICS: SIZE STANDARD:
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE	12. DISCOUNT TERMS	☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)
		13b. RATING
		14. METHOD OF SOLICITATION ☐ RFQ ☐ IFB ☐ RFP
15. DELIVER TO	CODE	16. ADMINISTERED BY CODE
17a. CONTRACTOR/ OFFEROR CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY CODE
TELEPHONE NO.		
☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	(Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA	26. TOTAL AWARD AMOUNT *(For Govt. Use Only)*

☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED

☐ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED

☐ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED	☐ 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*	
30b. NAME AND TITLE OF SIGNER *(Type or print)*	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER *(Type or print)*	31c. DATE SIGNED

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PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449 (REV. 5/2011)
Prescribed by GSA - FAR (48 CFR) 53.212

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELPHONE NUMBER OF AUTHORZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER ☐ PARTIAL ☐ FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT ☐ COMPLETE ☐ PARTIAL ☐ FINAL	37. CHECK NUMBER

38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY *(Print)*	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT *(Location)*	
		42c. DATE REC'D *(YY/MM/DD)*	42d. TOTAL CONTAINERS

STANDARD FORM 1449 (REV. 5/2011) **BACK**

■ 5. Amend section 53.302–347 by revising the form to read as follows:

§ 53.302–347 Order for Supplies or Services.

ORDER FOR SUPPLIES OR SERVICES

PAGE OF PAGES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER	2. CONTRACT NO. *(If any)*
3. ORDER NO.	4. REQUISITION/REFERENCE NO.
5. ISSUING OFFICE *(Address correspondence to)*	
7. TO:	
a. NAME OF CONTRACTOR	
b. COMPANY NAME	
c. STREET ADDRESS	
d. CITY / e. STATE / f. ZIP CODE	

6. SHIP TO:

a. NAME OF CONSIGNEE

b. STREET ADDRESS

c. CITY / d. STATE / e. ZIP CODE

f. SHIP VIA

8. TYPE OF ORDER

☐ a. PURCHASE

REFERENCE YOUR: _____

Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.

☐ b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION DATA

10. REQUISITIONING OFFICE

11. BUSINESS CLASSIFICATION (*Check appropriate box(es)*)

☐ a. SMALL ☐ b. OTHER THAN SMALL ☐ c. DISADVANTAGED ☐ d. WOMEN-OWNED ☐ e. HUBZone

☐ f. SERVICE-DISABLED VETERAN-OWNED ☐ g. WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM ☐ h. ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB)

12. F.O.B. POINT

13. PLACE OF		14. GOVERNMENT B/L NO.	15. DELIVER TO F.O.B. POINT ON OR BEFORE *(Date)*	16. DISCOUNT TERMS
a. INSPECTION	b. ACCEPTANCE			

17. SCHEDULE *(See reverse for Rejections)*

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)

SEE BILLING INSTRUCTIONS ON REVERSE

18. SHIPPING POINT / 19. GROSS SHIPPING WEIGHT / 20. INVOICE NO.

21. MAIL INVOICE TO:

a. NAME

b. STREET ADDRESS *(or P.O. Box)*

c. CITY / d. STATE / e. ZIP CODE

17(h) TOT. *(Cont. pages)*

$

17(i) GRAND TOTAL

22. UNITED STATES OF AMERICA BY *(Signature)*

23. NAME *(Typed)*

TITLE: CONTRACTING/ORDERING OFFICER

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OPTIONAL FORM 347 (REV. 5/2011)
Prescribed by GSA/FAR 48 CFR 53.213(f)

SUPPLEMENTAL INVOICING INFORMATION

If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement, (signed and dated) is on (or attached to) the order: "Payment is requested in the amount of $ _____ . No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided: contract number (if any), order number, item number(s), description of supplies or service, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been: ☐ inspected, ☐ accepted, ☐ received by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

SHIPMENT NUMBER	PARTIAL		DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T REP.	DATE
	FINAL				
TOTAL CONTAINERS		GROSS WEIGHT	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

OPTIONAL FORM 347 (REV. 5/2011) **BACK**

[FR Doc. 2011–12856 Filed 5–27–11; 8:45 am]

BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0077, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–52; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–52, which amend the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2005–52, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–52 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–52

Item	Subject	FAR Case	Analyst
I	Sustainable Acquisition	2010–001	Clark.
II	Contract Closeout	2008–020	McFadden.
III	Prohibition on Contracting with Inverted Domestic Corporations	2008–009	Davis.
IV	Buy American Exemption for Commercial Information Technology—Construction Material	2009–039	Davis.
V	Oversight of Contractor Ethics Programs	2010–017	Robinson.
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–52 amends the FAR as specified below:

Item I—Sustainable Acquisition (FAR Case 2010–001) (Interim)

This interim rule amends the FAR to implement Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. It requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies, materials, products, and services. Federal agencies are additionally required to implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices in applicable acquisitions. Contractors will be required to support the goals of an agency's environmental management system.

Item II—Contract Closeout (FAR Case 2008–020)

This final rule amends the FAR procedures for closing out contracts. A proposed rule was published August 20, 2009. This rule revises procedures and sets forth a timeframe for clearing final patent reports; updates quick-closeout procedures, including applicable thresholds; sets forth a description of an adequate final indirect cost rate proposal and supporting data; and adds language for withholding fees to protect the Government's interest and encourage timely submissions of an adequate final indirect cost rate proposal. The rule does not impose any additional requirements on small businesses.

Item III—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2008–009)

This final rule implements section 740 of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) and similar restrictions in 2008 and 2009 appropriations acts, which prohibit the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one, except as permitted in specific exceptions as set forth in the rule. The rule does not impose any requirements on small businesses.

Item IV—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039)

This rule adopts as final, without change, an interim rule. The interim rule amended the FAR to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Item V—Oversight of Contractor Ethics Programs (FAR Case 2010–017)

This final rule modifies FAR 42.302, Contract Administration Functions, to add to the list of contract administration functions, the function of ensuring that contractors have implemented FAR 52.203–13, Contractor Code of Business Ethics and Conduct.

Contracting officers may ask to see a contractor's code of ethics or a contractor's ethics program, but the contracting officer is not required to ask for a copy of any documents.

Item VI—Technical Amendments

Editorial changes are made at FAR 52.212–3, 53.301–1447, 53.301–1449, and 52.302–347.

Dated: May 18, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–12857 Filed 5–27–11; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 104 May 31, 2011

Part III

Department of Health and Human Services

45 CFR Part 164
HIPAA Privacy Rule Accounting of Disclosures Under the Health Information Technology for Economic and Clinical Health Act; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 164

RIN 0991–AB62

HIPAA Privacy Rule Accounting of Disclosures Under the Health Information Technology for Economic and Clinical Health Act

AGENCY: Office for Civil Rights, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS or "the Department") is issuing this notice of proposed rulemaking to modify the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule's standard for accounting of disclosures of protected health information. The purpose of these modifications is, in part, to implement the statutory requirement under the Health Information Technology for Economic and Clinical Health Act ("the HITECH Act" or "the Act") to require covered entities and business associates to account for disclosures of protected health information to carry out treatment, payment, and health care operations if such disclosures are through an electronic health record. Pursuant to both the HITECH Act and its more general authority under HIPAA, the Department proposes to expand the accounting provision to provide individuals with the right to receive an access report indicating who has accessed electronic protected health information in a designated record set. Under its more general authority under HIPAA, the Department also proposes changes to the existing accounting requirements to improve their workability and effectiveness.

DATES: Submit comments on or before August 1, 2011.

ADDRESSES: You may submit comments, identified by RIN 0991–AB62, by any of the following methods (please do not submit duplicate comments):

- *Federal eRulemaking Portal:http://www.regulations.gov*. Follow the instructions for submitting comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* U.S. Department of Health and Human Services, Office for Civil Rights, Attention: HIPAA Privacy Rule Accounting of Disclosures, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office for Civil Rights, Attention: HIPAA Privacy Rule Accounting of Disclosures, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at *http://www.regulations.gov.* Because comments will be made public, they should not include any sensitive personal information, such as a person's social security number; date of birth; driver's license number, state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information, or any non-public corporate or trade association information, such as trade secrets or other proprietary information.

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

The discussion below includes a description of the statutory and regulatory background of the proposed rule, a section-by-section description of the proposed modifications, and the impact statement and other required regulatory analyses. We solicit public comment on the proposed rule.

I. Statutory and Regulatory Background

A. The Accounting of Disclosures Under the Current Privacy Rule

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), title II, subtitle F—Administrative Simplification, Pubic Law 104–191, 110 Stat. 2021, provided for the establishment of national standards to protect the privacy and security of personal health information. The Administrative Simplification provisions of HIPAA apply to three types of entities, which are known as "covered entities": health care providers who conduct covered health care transactions electronically, health plans, and health care clearinghouses.

Pursuant to HIPAA, the Department promulgated the Standards for Privacy of Individually Identifiable Health Information, known as the "Privacy Rule," on December 28, 2000 (amended on August 14, 2002). See 65 FR 82462, as amended at 67 FR 53182. The Privacy Rule at 45 CFR 164.528 requires covered entities to make available to an individual upon request an accounting of certain disclosures of the individual's protected health information made during the six years prior to the request. A disclosure is defined at § 160.103 as "the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information."

For each disclosure, the accounting must include: (1) The date of the disclosure; (2) the name (and address, if known) of the entity or person who received the protected health information; (3) a brief description of the information disclosed; and (4) a brief statement of the purpose of the disclosure (or a copy of the written request for the disclosure). For multiple disclosures to the same person for the same purpose, the accounting is only required to include: (1) For the first disclosure, a full accounting, with the elements described above; (2) the frequency, periodicity, or number of disclosures made during the accounting period; and (3) the date of the last such disclosure made during the accounting period.

Section 164.528(a)(1) provides that an accounting must include all disclosures of protected health information, except for disclosures:

- To carry out treatment, payment and health care operations as provided in § 164.506;
- To individuals of protected health information about them as provided in § 164.502;
- Incident to a use or disclosure otherwise permitted or required by this subpart, as provided in § 164.502;
- Pursuant to an authorization as provided in § 164.508;
- For the facility's directory or to persons involved in the individual's care or other notification purposes as provided in § 164.510;
- For national security or intelligence purposes as provided in § 164.512(k)(2);
- To correctional institutions or law enforcement officials as provided in § 164.512(k)(5);

• As part of a limited data set in accordance with § 164.514(e); or

• That occurred prior to the compliance date for the covered entity.

For disclosures for research in accordance with § 164.512(i) (such as disclosures subject to an Institutional Review Board's waiver of authorization) involving 50 or more individuals, § 164.528(b)(4) permits the covered entity to provide a list of research protocols rather than specific information about each disclosure. Accordingly, an individual who requests an accounting of disclosures may receive a list of research protocols with information about each protocol, including contact information, rather than specific information about disclosures for research.

The current accounting provision applies to disclosures of paper and electronic protected health information, regardless of whether such information is in a designated record set. While the obligation to provide an individual with an accounting of disclosures falls to the covered entity, the accounting must include disclosures to and by its business associates. Business associates are required, as a term of their business associate agreements, to make available the information required for the covered entity's accounting.

B. Changes Required by the HITECH Act

Section 13405(c) of the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), provides that the exemption at § 164.528(a)(1)(i) of the Privacy Rule for disclosures to carry out treatment, payment, and health care operations no longer applies to disclosures "through an electronic health record." Section 13400 of the HITECH Act defines an electronic health record ("EHR") as "an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff." Under section 13405(c), an individual has a right to receive an accounting of such disclosures made during the three years prior to the request. With respect to disclosures by business associates through an EHR to carry out treatment, payment, and health care operations on behalf of the covered entity, section 13405(c) requires the covered entity to provide either an accounting of the business associates' disclosures, or a list and contact information of all business associates (enabling the individual to contact each business associate for an accounting of the business associate's disclosures).

The HITECH Act, at section 13405(c), requires the Secretary to promulgate regulations governing what information is to be collected about these disclosures. The regulations "shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of the individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burden of accounting for such disclosures."

Additionally, section 13101 of the HITECH Act, which adds section 3004(b)(1) of the Public Health Service Act, requires the Secretary to adopt an initial set of standards, implementation specifications, and certification criteria for EHR technology. These standards, implementation specifications, and certification criteria are required to address the areas set forth in the newly added section 3002(b)(2)(B) of the Public Health Service Act, including the "[t]echnologies that as a part of a qualified electronic health record allow for an accounting of disclosures made by a [HIPAA covered entity] for purposes of treatment, payment, and health care operations (as such terms are defined for purposes of [the HIPAA regulations]." Section 13405(c) links the modifications to the HIPAA accounting requirements to the above standards, providing that the Secretary issue the accounting regulations within six months of the Secretary's adoption of the EHR accounting standard.

In an interim final rule published on January 13, 2010, the HHS Office of the National Coordinator for Health Information Technology (ONC) adopted a standard and certification criterion to account for disclosures at 45 CFR 170.210(e) and 170.302(v), 75 FR 2014, 2044, 2046. The standard and certification criterion provide that certified EHR technology have the capability to record the date, time, patient identification, user identification, and a description of the disclosure, for disclosures made for treatment, payment, and health care operations. ONC published a final rule on July 28, 2010, which retained this standard but made the certification criterion optional. In the final rule (75 FR 44623), ONC discussed its rationale for retaining the standard for accounting for treatment, payment, and health care operations disclosures and making the related certification criterion optional. Accordingly, EHR technology is not required to have the capability to account for treatment, payment, and health care operations disclosures as a condition of certification for meaningful use Stage 1 under the Medicare and Medicaid EHR incentive payment programs. The Office for Civil Rights will continue to work closely with ONC to ensure that the standards and certification criteria for certified EHR technology align with the HIPAA Privacy Rule accounting of disclosures requirement.

The HITECH Act provides that the effective date of the new accounting requirement for HIPAA covered entities that have acquired an EHR after January 1, 2009, is January 1, 2011, or the date that it acquires an EHR, whichever is later. For covered entities that acquired EHRs prior to January 1, 2009, the effective date is January 1, 2014. The statute authorizes the Secretary to extend both of these compliance deadlines to no later than 2013 and 2016, respectively.

II. Request for Information

On May 3, 2010, HHS published a request for information (RFI) seeking further information on individuals' interests in learning of disclosures, the burdens on covered entities in accounting for disclosures, and the capabilities of current technology. We received approximately 170 comments from numerous organizations representing health plans, health care providers, privacy advocates, and other non-covered entities. These comments are summarized below and were considered when drafting this proposed rule.

The first question in the RFI asked about the potential benefits to individuals from receiving an accounting of disclosures, particularly an accounting that included disclosures for treatment, payment, and health care operations. Approximately 10 respondents representing both consumers and covered entities endorsed the benefits of such an accounting in order to foster transparency and patient trust, as well as to discourage inappropriate behavior. Commenters pointed out that the use of audit trails and the right to an accounting of disclosures improves the detection of breaches and assists with the identification of weaknesses in privacy and security practices. Roughly 10 commenters representing covered entities agreed generally that there are potential benefits to transparency, but questioned whether general accountings would provide the type of information that individuals usually seek. The majority of comments, contributed mostly by covered entities, indicated that providing an accounting of

treatment, payment, and health care operations disclosures would provide little to no benefit to individuals (over 80 respondents), while incurring substantial administrative, staffing and monetary burdens (over 120 respondents).

The second and third RFI questions inquired about individuals' awareness of their right to receive an accounting of disclosures, how covered entities ensure individuals are aware of their accounting right, and the number of accounting requests that covered entities have received. Most covered entities responded that individuals are aware of their accounting right from the notices of privacy practices covered entities provide to individuals. The responses indicated that almost 30 covered entity respondents have received no requests for an accounting of disclosures and more than 90 covered entity respondents have received less than 20 requests since the Privacy Rule's 2003 compliance date.

The fourth RFI question asked about individual use of and satisfaction with the information received in accountings of disclosures. Some covered entities reported receiving accounting requests that were prompted by concerns over a specific situation or person that may have accessed their records. Some covered entities also reported individuals withdrawing their requests for an accounting once they realized that inappropriate uses of protected health information (such as inappropriate access by a member of the workforce) would not be included in the accounting. Most covered entities that have received accounting requests were not aware of how the information was used by individuals or if it was useful to them. Consumer advocates were divided on this topic; one indicated that accountings of disclosures have been useful to individuals, and one related that the accountings have likely not been useful to individuals since the reports have lacked information about the treatment, payment and healthcare operations disclosures.

The fifth question in the RFI asked whether an accounting for treatment, payment, and health care operations disclosures should include the following elements and, if so, why: to whom a disclosure was made, and the reason or purpose for the disclosure. This question also asked about the specificity needed regarding the purpose of a disclosure, and to what extent individuals are familiar with activities that may constitute "health care operations." Regarding the recipient of the disclosure, approximately 60% of the comments, representing covered entities and industry, indicated that recipient information should not be included in an accounting of disclosures. In a few cases, concerns about employee privacy, security, and safety were cited as a reason not to include recipient information. On the other hand, almost 40% of commenters, representing consumers, covered entities and industry, felt that information about the recipient would be vital in addressing individuals' concerns regarding inappropriate receipt of their health information.

Over 60% of the commenters, representing covered entities and industry, indicated that the purpose of the disclosure should not be included due to the minimal benefit this information would provide to individuals and the significant difficulty in capturing this information. Since most current systems do not automatically capture the purpose of a disclosure, new actions would be required, resulting in a disruption of provider workflow. In contrast, almost 20% of commenters, representing consumers and covered entities, indicated that an accounting of disclosures would be useless to individuals without a description of the purpose of each disclosure. Almost one third of comments on this issue supported the use of general categories if a description of the purpose of a disclosure is required. Most respondents felt that individuals do not have a good understanding of what may constitute "health care operations."

Question six of the RFI asked about the capabilities of current EHR systems. Almost all comments received on this topic indicated that current EHR systems are unable to distinguish between a "use" and a "disclosure," are decentralized, and cannot generate accountings of disclosures reports automatically, requiring manual entry to assemble a report for each requested accounting. The comments reflected a variety of audit log experiences, representative of the wide range of systems used for various functions in the health care system. According to the comments, most current audit logs retain at least the name or other identification of the individual who accessed the record, the name or other identification of the record that was accessed, the date, the time, and the area, module, or screen of the EHR that was accessed. Comments generally indicated that maintaining current audit logs for three years would incur minimal additional burden; however, increasing the information retained to include additional information about treatment, payment, and health care operations disclosures would create additional storage space burden.

The seventh RFI question asked about the feasibility of the HITECH Act compliance timelines for the new accounting requirements. The HITECH Act provides that a covered entity that has acquired an EHR after January 1, 2009, must comply with the new accounting requirement by January 1, 2011, unless the Department extends this compliance deadline to no later than 2013. Almost all comments received on this topic indicated that the January 1, 2011, deadline would be impossible to meet. Estimates of the time needed to develop and implement the new accounting feature and subsequently install updated systems varied, however many comments indicated needing at least two years past the 2011 date for compliance. Fewer than 10 early adopters of EHRs (acquired before January 1, 2009) responded, generally indicating that they would also need longer than the 2014 date for compliance, and that the timing would be dependent on vendors developing appropriate systems.

Question eight requested input on the feasibility of an EHR module that is exclusively dedicated to accounting for disclosures. Almost 90% of the comments received on this topic indicated that a separate module to produce accounting of disclosures reports would not be an ideal solution due to the significant time and expense needed to develop such a module for limited benefit, given the low number of accounting requests received to date. Comments also indicated a potential for this effort to detract from meaningful use requirements.

The final question of the RFI requested any other information that would be helpful to the Department regarding accounting for disclosures through an EHR to carry out treatment, payment, and health care operations. A large percentage of the comments expressed concerns with the burdens that this new accounting of disclosures requirement would create. These comments cited increased health care costs, reduced patient care time resulting from disruptions in provider workflow, and a potential chilling effect on the adoption of EHR systems, particularly for small providers. In addition, we received suggestions and requests for clarification on the scope of EHRs, disclosures, and disclosures through an EHR.

III. Overview of Proposed Rule

We are proposing to revise § 164.528 of the Privacy Rule by dividing it into two separate rights for individuals:

paragraph (a) would set forth an individual's right to an accounting of disclosures and paragraph (b) would set forth an individual's right to an access report (which would include electronic access by both workforce members and persons outside the covered entity). Our revisions to the right to an accounting of disclosures are based on our general authority under HIPAA and are intended to improve the workability and effectiveness of the provision. The right to an access report is based in part on the requirement of section 13405(c) of the HITECH Act to provide individuals with information about disclosures through an EHR for treatment, payment, and health care operations. This right to an access report is also based in part on our general authority under HIPAA, in order to ensure that individuals are receiving the information that is of most interest.

These two rights, to an accounting of disclosures and to an access report, would be distinct but complementary. The right to an access report would provide information on who has accessed electronic protected health information in a designated record set (including access for purposes of treatment, payment, and health care operations), while the right to an accounting would provide additional information about the disclosure of designated record set information (whether hard-copy or electronic) to persons outside the covered entity and its business associates for certain purposes (*e.g.,* law enforcement, judicial hearings, public health investigations). The intent of the access report is to allow individuals to learn if specific persons have accessed their electronic designated record set information (it will not provide information about the purposes of the person's access). In contrast, the intent of the accounting of disclosures is to provide more detailed information (a "full accounting") for certain disclosures that are most likely to impact the individual.

We believe that these changes to the accounting requirements will provide information of value to individuals while placing a reasonable burden on covered entities and business associates. The process of creating a full accounting of disclosures is generally a manual, expensive, and time consuming process for covered entities and business associates. In contrast, we believe that the process of creating an access report will be a more automated process that provides valuable information to individuals with less burden to covered entities and business associates. By limiting the access report to electronic access, the report will include information that a covered entity is already required to collect under the Security Rule. Under §§ 164.308(a)(1)(ii)(D) and 164.312(b) of the HIPAA Security Rule, a covered entity is required to record and examine activity in information systems and to regularly review records of such activity. Accordingly, our proposal attempts to shift the accounting provision from a manual process that generates limited information to a more automated process that produces more comprehensive information (since it includes all access to electronic designated record set information, whether such access qualifies as a use or disclosure). We believe that these two rights, in conjunction, would provide individuals with greater transparency regarding the use and disclosure of their information than under the current rule.

The right to an accounting of disclosures would encompass disclosures of both hard copy and electronic protected health information that is maintained in a designated record set. It would cover a three-year period, and would require a covered entity and its business associates to account for the disclosures of protected health information that we believe are of most interest to individuals. The right to an access report would only apply to protected health information about an individual that is maintained in an electronic designated record set. Our proposed rule would provide an individual with a right to obtain a copy of this information in the form of an "access report." It would cover a three-year period, and would provide the individual with information about who has accessed the individual's electronic protected health information held by a covered entity or business associate. It would not distinguish between "uses" and "disclosures," and thus, would apply when any person accesses an electronic designated record set, whether that person is a member of the workforce or a person outside the covered entity. We propose to require that the access report identify the date, time, and name of the person (or name of the entity if the person's name is unavailable) who accessed the information (we also propose to require the inclusion of a description of the protected health information that was accessed and the user's action, but only to the extent that such information is available).

With respect to the right to an accounting of disclosures and the right to an access report, covered entities would be required to include the applicable uses and disclosures of their business associates. Because these rights are limited to protected health information maintained in a designated record set, we believe that some business associates will not be affected by these requirements because they do not have designated record set information.

We are proposing a revision to the requirements for notices of privacy practices at § 164.520 in order to inform individuals of their right to receive an access report, in addition to an accounting of certain disclosures.

We are proposing that covered entities (including small health plans) and business associates comply with the modifications to the accounting of disclosures requirement beginning 180 days after the effective date of the final regulation (240 days after publication). We are proposing that covered entities and business associates provide individuals with a right to an access report beginning January 1, 2013, for electronic designated record set systems acquired after January 1, 2009, and beginning January 1, 2014, for electronic designated record set systems acquired as of January 1, 2009.

IV. Section-by-Section Description of Proposed Rule

The following describes the provisions of the proposed rule section by section. Those interested in commenting on the proposed rule can assist the Department by preceding discussion of any particular provision or topic with a citation to the section of the proposed rule being discussed. While we request comment on several specific questions, we welcome comments on any aspects of the proposed rule.

A. Accounting of Disclosures of Protected Health Information—Section 164.528(a)

We are proposing the following modifications to the existing accounting of disclosures requirements to improve the workability of the requirements and to better focus the requirements on providing the individual with information about those disclosures that are most likely to impact the individual's legal and personal interests, while taking into account the administrative burdens on covered entities and business associates.

1. Standard: Right to an Accounting of Disclosures

Paragraph (a)(1)(i) of the proposed rule would maintain the general standard that an individual has a right to receive an accounting of disclosures by a covered entity or business associate, but would include a number of changes to this right. Specifically, we

propose to change the scope of information subject to the accounting to the information about an individual in a designated record set, to explicitly include business associates in the language of the standard, to change the accounting period from six years to three years, and to list the types of disclosures that are subject to the accounting (rather than listing the types of disclosures that are exempt from the accounting).

Currently, an individual has a right under § 164.528 to an accounting of certain disclosures of protected health information about the individual, regardless of where such information is located. We are proposing to limit the accounting provision to protected health information about the individual in a designated record set. Designated record sets include the medical and health care payment records maintained by or for a covered entity, and other records used by or for the covered entity to make decisions about individuals. See the definition of "designated record set" at § 164.501.

This proposed change would better align the accounting provision at § 164.528 with the individual's rights to access and amend protected health information at §§ 164.524 and 164.526, which are both limited to protected health information about an individual in a designated record set. We believe that this information, which forms the basis for covered entities' health care and payment decisions about the individual, generally represents the protected health information that is of most interest to the individual.

Covered entities should already have documentation of which systems qualify as designated record sets. Currently, § 164.524(e)(1) provides that "[a] covered entity must document the following and retain the documentation as required by § 164.530(j): (1) [t]he designated record sets that are subject to access by individuals; * * *" Covered entities and business associates are likely able to track those disclosures of protected health information within defined and established record sets and systems more easily.

An example of protected health information that may fall outside the designated record set is a hospital's peer review files. If these files are only used to improve patient care at the hospital, and not to make decisions about individuals, then they are not part of the hospital's designated record set. Another example of protected health information that is outside the designated record set are transcripts of customer calls that are used only for purposes of customer service review, rather than to make decisions about the individual.

Note that protected health information outside the designated record set would remain fully protected by the Privacy Rule and, with respect to electronic protected health information, the Security Rule. Further, the Breach Notification Rule continues to apply to all protected health information in any form and regardless of where such information exists at a covered entity or business associates. Thus, individuals would still be informed of breaches of unsecured protected health information even if such information resides outside of a designated record set.

We request comment on our proposal to limit the accounting requirement to protected health information in a designated record set and whether there are unintended consequences with doing so either in terms of workability or the privacy interests of the individual.

We include a direct reference to business associates in the standard to make clear that the covered entity must include accounting information for all disclosures by the covered entity's business associates that create, receive, maintain, or transmit designated record set information. Under the current Privacy Rule, a covered entity is required at § 164.504(e)(2)(ii)(G) to include in its business associate agreements the requirement that the business associate will "make available the information required to provide an accounting of disclosures in accordance with § 164.528." Section 164.528(b)(1) currently provides that the accounting must include "disclosures to or by business associates of the covered entity" without regard to whether such information is maintained within a designated record set. To align with our proposal to apply the accounting requirements only to information within a designated record set, we in turn limit the information held by business associates that is subject to the accounting to information within a designated record set. For example, if a business associate is a third party administrator and maintains a copy of an individual's billing information, the covered entity must coordinate with the business associate to provide an accounting of the disclosures of this information. Similarly, we propose that if a business associate maintains a copy of an individual's medical record, then the covered entity would be required to account for the business associate's disclosure of this information. In contrast, a covered entity would not be required to account for a business associate's disclosure of information outside of a designated record set. As stated above, we believe that this represents the information that is of most interest to individuals, since it is the information that covered entities use to make health care and payment decisions about the individual.

We propose that covered entities and business associates must generally account for disclosures over a three-year period. The current accounting provision requires covered entities and business associates to account for disclosures for the six-year period prior to the request. Section 13405(c)(1)(B) of the HITECH Act, however, states that an individual has a right to receive an accounting of treatment, payment, and health care operations disclosures through an EHR for the three-year period prior to the request. We believe that it is appropriate to maintain a consistent accounting time period for all types of disclosures. Accordingly, our proposal aligns the accounting period for all types of disclosures with the three-year period set forth in section 13405(c)(1)(B) of the HITECH Act. Additionally, based on our experience to date, we believe that individuals who request an accounting of disclosures are generally interested in learning of more recent disclosures (*e.g.,* an individual is seeking information on why she has recently begun to receive information related to her health condition from a third party). Therefore, we do not believe that it will be a significant detriment to individuals to reduce the accounting period from six years to three years. In contrast, we believe it is a significant burden on covered entities and business associates to maintain information on six years of disclosures, rather than three years. We request comment on this issue and if there are specific concerns regarding the need for accounting of disclosures beyond three years.

Paragraph (a)(1)(i) also would address which disclosures are subject to the accounting requirement. We propose to explicitly list the types of disclosures that are subject to the accounting requirement. In contrast, under the current Privacy Rule, § 164.528 provides that disclosures are generally subject to the accounting requirement, but then lists a series of exceptions. We believe that by explicitly listing the exceptions, but not the types of disclosures that are subject to the accounting requirement, the current regulatory language may make it difficult to easily and readily understand the types of disclosures that are subject to the accounting requirement. Thus, our proposed rule takes the opposite approach and explicitly lists the types of disclosures

that are subject to the accounting requirement.

We propose that covered entities will continue to be required to account for disclosures that are impermissible under the Privacy Rule. While individuals will learn of most impermissible disclosures through the Breach Notification Rule at § 164.404, we expect that some individuals will be interested in learning of impermissible disclosures that did not rise to the level of a breach (*e.g.,* because the disclosure did not compromise the security or privacy of the protected health information). This ensures that covered entities and business associates maintain full transparency with respect to any impermissible disclosures by allowing a means (either through receipt of a breach notice or by requesting an accounting) for individuals to learn of all ways in which their designated record set information has been disclosed in a manner not permitted by the Privacy Rule.

We propose to exempt from the accounting requirement impermissible disclosures in which the covered entity (directly or through a business associate) has provided breach notice. We do not believe it is necessary to require the covered entity or its business associates to account for such disclosures since the covered entity has already made the individual aware of the impermissible disclosure through the notification letter required by the Breach Notification Rule. The breach notification requirement serves the same purpose as the accounting requirement, but it is much more rigorous in that it is an affirmative duty on the covered entity to notify the individual of an impermissible disclosure in a more timely and detailed manner than the accounting for disclosures. Nonetheless, covered entities are free to also include in the accounting disclosures for which breach notification has already been provided to the individual if they choose to do so. We request comment on the burdens on covered entities and benefits to individuals associated with also receiving an accounting of disclosures that includes information provided in accordance with the breach notification requirement.

We also propose to continue to include in the accounting requirement disclosures for public health activities (except those involving reports of child abuse or neglect), for judicial and administrative proceedings, for law enforcement activities, to avert a serious threat to health or safety, for military and veterans activities, for the Department of State's medical suitability determinations, to government programs providing public benefits, and for workers' compensation. We believe that these are the types of disclosures for which individuals are more likely to have a significant legal or personal interest.

We have proposed to continue to include disclosures for public health purposes because, although some public health disclosures are population-based and may have limited impact on individuals, other public health disclosures, such as those related to targeted public health investigations, may be very specific to an individual and could have significant consequences to the individual. As discussed below, if a public health disclosure is also required by law, it would not be subject to the proposed accounting requirement. For example, if a disclosure to a public health authority regarding a communicable disease is required by law, the covered entity would not need to account for the disclosure. In contrast, if a disclosure regarding an individual's communicable disease is authorized, but not required, by law (meaning that it is at the discretion of the covered entity), then the covered entity would be required to account for the disclosure.

Within public health disclosures, however, we are proposing to exempt from the accounting reports of child abuse or neglect to a public health authority or other appropriate government authority authorized by law to receive such reports, as permitted under § 164.512(b)(1)(ii). Since the initial compliance date of the Privacy Rule, a number of entities have raised concerns about the potential harm a covered entity or the members of its workforce may suffer as a result of having to account to a parent or guardian for its reporting to authorities of suspected child abuse or neglect. While the current Privacy Rule at § 164.502(g)(5)(i)(B) provides that a covered entity may elect not to treat a person as an individual's personal representative when the covered entity reasonably believes that doing so could endanger the individual, a covered entity does not have the same discretion when it believes its actions could instead endanger the reporter. Thus, we believe it prudent to exempt such disclosures from the accounting requirement. Further, it is our understanding that the reporting of suspected child abuse or neglect is generally mandated by law and thus, would nonetheless be exempt from the accounting under our proposal (described below) to exempt from the accounting most disclosures that are required by law.

With respect to the remainder of public health disclosures (*i.e.,* public health disclosures other than those related to reports of child abuse or neglect), we request comment on whether there are other categories of public health disclosures that warrant an exception because such disclosures may be of limited interest to individuals and/or because accounting for such disclosures may adversely affect certain population-based public health activities, such as active surveillance programs. We also request comment on whether the complexity of carving out such public health disclosures would lead to too much confusion among individuals and covered entities.

We expect that individuals may have a significant interest in learning of disclosures for judicial and administrative proceedings, law enforcement, and to avert a serious threat to health or safety because such disclosures may significantly impact individuals' legal interests. We thus propose to continue to require that covered entities account for such disclosures.

We propose to continue to require covered entities and business associates to account for disclosures for military and veterans activities under § 164.512(k)(1) and for purposes of the Department of State's medical suitability determinations under § 164.512(k)(4) because such disclosures may have significant employment and benefits consequences to the individual, such as a determination that an individual is not medically able to perform an assignment or mission or not eligible for certain veteran's benefits. In addition, we propose to continue to apply the accounting requirements to disclosures to government programs providing public benefits under § 164.512(k)(6) and for workers' compensation purposes under § 164.512(l) because such disclosures may adversely affect an individual's claim or benefits.

As previously stated, the proposed rule explicitly lists the types of disclosures that are subject to the accounting requirement, rather than the previous approach of listing the types of disclosures for which an accounting was not required. Despite this change in regulatory approach, the following disclosures continue to be excluded from the accounting requirement: (i) To individuals of protected health information about them as provided in § 164.502; (ii) incident to a use or disclosure otherwise permitted or required by the Privacy Rule, as provided in § 164.502; (iii) pursuant to an authorization as provided in

§ 164.508; (iv) for the facility's directory or to persons involved in the individual's care or other notification purposes as provided in § 164.510; (v) for national security or intelligence purposes as provided in § 164.512(k)(2); (vi) to correctional institutions or law enforcement officials as provided in § 164.512(k)(5); (vii) as part of a limited data set in accordance with § 164.514(e); or (viii) that occurred prior to the compliance date for the covered entity. How these exceptions are treated for purposes of the access report is discussed below. Disclosures to carry out treatment, payment and health care operations as provided in § 164.506 would continue to be exempt for paper records. However, in accordance with section 13405(c) of the HITECH Act, an individual would be able to obtain information (such as the name of the person accessing the information) for all access to electronic protected health information stored in a designated record set for purposes of treatment, payment and health care operations.

We also request comment on whether the Department should exempt from the accounting requirements certain categories of disclosures that are currently subject to the accounting. In particular, for the reasons discussed below, we are proposing to exclude disclosures about victims of abuse, neglect, or domestic violence under § 164.512(c); disclosures for health oversight activities under § 164.512(d); disclosures for research purposes under § 164.512(i);[1] disclosures about decedents to coroners and medical examiners, funeral directors, and for cadaveric organ, eye, or tissue donation purposes under § 164.512(g) and (h); disclosures for protective services for the President and others under § 164.512(k)(3); and most disclosures that are required by law (including disclosures to the Secretary to enforce the HIPAA Administrative Simplification Rules). Note, however, to the extent such disclosures are made through direct access to electronic designated record set information, such disclosures will be recorded and available to the individual in an access report under proposed § 164.528(b). We request comment on our proposal to exclude these categories from the accounting of disclosures requirements, including comment on the rationales expressed below, and will revisit these exclusions in drafting the final rule based on the public comment we receive.

First, we are proposing to exclude from the accounting requirement disclosures related to reports of adult abuse, neglect, or domestic violence under § 164.512(c). As with the proposal to exclude disclosures for child abuse reporting, we have concerns that accounting for such disclosures could endanger the reporter of the abuse. Further, the Privacy Rule at § 164.512(c)(2) requires the covered entity to promptly inform the individual that an abuse or domestic violence report has been or will be made to the proper authorities unless doing so may endanger the individual. Thus, in most cases, the individual will be affirmatively notified of such disclosures by the covered entity, which obviates the need for the disclosures to be included in an accounting.

In this proposed rule, we are also considering removing from the accounting requirement disclosures for research under § 164.512(i), which includes research where an Institutional Review Board (IRB) or Privacy Board has waived the requirement for individual authorization because, among other reasons, it determined that the study poses no more than a minimal risk to the privacy of individuals and the waiver is needed to conduct the research.[2] Because such research may involve thousands of medical records and the burden to account for each disclosure may have a chilling effect on important areas of study, the current Privacy Rule includes a simplified accounting requirement for larger studies. In particular, the Privacy Rule allows a covered entity to provide individuals with a protocol listing describing the research protocols for which the individual's protected health information may have been disclosed, rather than an individualized accounting of each actual disclosure, for studies involving 50 or more individuals. The protocol listing must include the name of the protocol or other research activity; a plain language description of the research; a brief description of the types of protected health information that were disclosed; the date or period of time during which such disclosures occurred or may have occurred; contact information for the researcher and research sponsor; and a statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or research activity. If it is reasonably likely that the protected health information of the individual was disclosed for a particular research protocol or activity, the Privacy Rule requires that the covered entity assist in contacting the researcher and research sponsor, if requested by the individual. See § 164.528(b)(4)(ii).

Therefore, under the current rule, an individual that requests an accounting of disclosures will receive a specific accounting of certain disclosures (for example, disclosures for research studies involving less than 50 individuals) and a potentially large protocol listing of studies that may or may not include the individual's protected health information. The individual would not be notified of certain disclosures of protected health information for research (such as research in which the individual specifically authorized release of protected health information). In this proposed rule, we are considering whether to exempt covered entities from having to provide an accounting of disclosures for research, including through a protocol listing. Rather, the individual would continue to receive notice through the notice of privacy practices that protected health information may be used or disclosed for research, and the covered entity would only be able to disclose the individual's protected health information for research under limited circumstances (such as based on the individual's authorization or an IRB/Privacy Board finding that the research poses no more than a minimal risk to the individual's privacy).

The Department is considering excluding research disclosures from the accounting requirements because, even though the Privacy Rule includes this simplified accounting option for research disclosures to large studies, the Department continues to hear concerns from the research community regarding the administrative burden of the accounting requirements and the potentially resulting chilling effect the requirements have on human subjects research. For example, the Secretary's Advisory Committee for Human Research Protections (SACHRP) in its September 2004 letter to the Secretary recommended that the Department exempt research disclosures from the accounting requirements altogether. SACHRP indicated that a research protocol listing may be very extensive at

[1] Disclosures of limited data sets for research purposes under § 164.514(e) and disclosures for research purposes pursuant to an individual's authorization under § 164.508 are currently exempt from the accounting requirements and would not be impacted by this proposal.

[2] Section 164.512(i) also permits uses and disclosures for research without an individual's authorization where access to protected health information is sought solely to review the information as necessary to prepare a research protocol or for similar purposes and no protected health information is to be removed from the covered entity by the researcher in the course of the review or where access is being sought solely for research on the protected health information of decedents.

larger institutions and the requirement for a covered entity to assist individuals in contacting the researchers and research sponsors places an unreasonable burden on covered entities. SACHRP further indicated that, since the accounting requirements apply only to research "disclosures" and not "uses," whether access by researchers within institutions to protected health information must be accounted for depends entirely on whether the researchers are workforce members (uses) or physicians with staff privileges (disclosures), which is an "artificial" distinction. See Appendix A to SACHRP's September 27, 2004 letter to the Secretary, available at *http://www.hhs.gov/ohrp/sachrp/appendixa.html.*

Similarly, in a report on ways to enhance privacy and improve health through research, the Institute of Medicine (IOM) concluded that the Privacy Rule's current accounting provision for research disclosures places a heavy administrative burden on health systems and health services research but achieves little in terms of protecting privacy. *Beyond the HIPAA Privacy Rule: Enhancing Privacy, Improving Health through Research,* Institute of Medicine of the National Academies p. 51 (2009) (available at *http://www.iom.edu*). The IOM report recommended that the Department revise the Privacy Rule to exempt disclosures made for research from the Privacy Rule's accounting requirement. As an alternative, the IOM suggested that all institutions should maintain a list, accessible to the public, of all studies approved by an IRB/Privacy Board.

While acknowledging these concerns, the Department notes that it does not have sufficient information regarding the actual burden, as well as the utility, of providing the current accounting of research disclosures to individuals (*i.e.,* a specific accounting of disclosures for research studies where the disclosures involved less than 50 individuals and a protocol listing of studies where the disclosures involved 50 or more individuals). We thus solicit public comment on the value of the current accounting for research disclosures to individuals who have used or might in the future request such an accounting, including comments on what may be the most important/useful elements of the current accounting to individuals. We also ask covered entities to provide data regarding the number of protocols that would typically be included in a protocol listing, the nature and number of smaller research studies that involve the disclosure by the covered entity of protected health information about less than 50 individuals and for which a specific accounting is currently required, and the burdens on researchers and covered entities to provide the requested accountings of disclosures. Further, we seek public comment on alternative ways that we could provide the individual with information about the covered entity's research disclosures, such as the IOM's recommendation for a list of all IRB/Privacy Board approved studies, or whether other types of documentation about the research could be provided to the individual in a manner that is potentially less burdensome on covered entities but still sufficiently valuable to individuals. We will assess how to best provide information regarding research disclosures to individuals based on these comments.

We note that, as mentioned above, under proposed § 164.528(b), an individual would still be able to request an access report from the covered entity, which would include access for research purposes to electronic designated record set information by workforce members and others, such as physicians with staff privileges (although such electronic access would not be labeled as research).

We also propose to not include disclosures for health oversight activities under § 164.512(d). Such disclosures primarily are population-based or event triggered and thus relate to the covered entity, rather than the individual (if an investigation is focused on the individual rather than the covered entity, then the Privacy Rule at § 164.512(d)(2) generally treats the investigation as for law enforcement rather than health oversight, which means that the disclosure would be subject to the proposed accounting provision). Such disclosures are also often routine, to a government agency, and required by law. For these reasons, we do not believe the potential burden on a covered entity or business associate to account for what may be voluminous disclosures of records is balanced by what is likely not a strong interest on the part of individuals to learn of such disclosures. We request comment on these assumptions.

In addition, we are proposing to not include disclosures about decedents to coroners, medical examiners, and funeral directors under § 164.512(g) because we believe that such types of disclosures are relatively routine, expected, and do not raise significant privacy concerns. Similarly, we propose to exclude disclosures about decedents for cadaveric organ, eye, or tissue donation purposes under § 164.512(h). This limited provision permits a covered entity to disclose protected health information about a decedent in cases where there was no prior HIPAA authorization to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue donation and transplantation. The provision is intended to avoid putting covered entities in the position of having to request consent from grieving families with respect to donation of organs of a deceased loved one before a determination has been made that donation would be medically suitable. Given the circumstances and limited nature of the disclosure, and because we anticipate that families will be involved in the decision process with respect to the donation, we propose to exclude these disclosures from the accounting. We request comment on this proposal.

We are proposing to exclude most disclosures that are required by law because these disclosures are often population based rather than related to a specific individual, because they often reflect a determination by a state legislature or other government body rather than a discretionary decision of a covered entity or business associate, and because we believe it is reasonable to assume that individuals are aware that their health information will be disclosed where mandated by law. Further, individuals are generally informed that a covered entity may disclose an individual's protected health information when required to do so by other law through a covered entity's notice of privacy practices. Based on comments received, we have been informed that accounting for these nondiscretionary disclosures represents a significant administrative burden on covered entities. Thus, we propose that disclosures made under § 164.512(a)(1) of the Privacy Rule need not be included in an accounting in order to lessen this administrative burden.

In addition, in paragraph (a)(1)(ii), we propose to make clear that most disclosures that fall under paragraph (a)(1)(i) (*i.e.,* are for a purpose that would otherwise be subject to the accounting) but that are also required by law do not require an accounting. For example, if a disclosure to a public health authority or for workers' compensation is required by law (rather than merely authorized by law), then the covered entity or business associate is not required to include such a disclosure in a requested accounting. We propose, however, that covered entities and business associates account

for disclosures for judicial and administrative proceedings and for law enforcement purposes, even when such disclosures are required by law. This is consistent with our general treatment of such disclosures under § 164.512(a)(2), where we provide that a disclosure that is required by law but that also falls within the law enforcement or judicial and administrative proceeding provisions at § 164.512(e) and (f) must meet the latter's requirements. As indicated above, we believe that disclosures for law enforcement purposes and judicial and administrative proceedings directly implicate an individual's legal and/or personal interests and thus believe the individual should have a right to learn of such disclosures.

If a covered entity has been subject to the Privacy Rule for less than three years, then the covered entity only need account for the period of time during which the covered entity was subject to the Rule.

2. Implementation Specification: Content of the Accounting

Currently, the Privacy Rule at § 164.528(b)(2) requires an accounting of disclosures to include the date of disclosure, name and (if known) address of the recipient, a brief description of the type of protected health information disclosed, and a brief statement of the purpose of the disclosure. We are proposing to maintain these elements, but with some minor modifications.

We are proposing at paragraph (a)(2)(i)(A) that a covered entity or business associate need only provide an approximate date or period of time for each disclosure, if the actual date is not known. At a minimum, the approximate date must include a month and year or a description of when the disclosure occurred from which an individual can readily determine the month and year of the disclosure. Thus, the accounting may include the specific date of a disclosure (*e.g.,* December 1, 2010), a month and year (*e.g.,* December 2010), or an approximate time range (*e.g.,* between December 1, 2010 and December 15, 2010).

The Privacy Rule currently provides, at § 164.528(b)(3), that for multiple disclosures of protected health information to the same person or entity for the same purpose, the accounting may provide all of the information required by paragraph (b)(2) for the first disclosure; the frequency, periodicity, or number of disclosures during the accounting period; and the date of the last disclosure. We instead propose that, for multiple disclosures to the same person or entity for the same purpose, the approximate period of time is sufficient (*e.g.,* for numerous disclosures, "December 2010 through August 2011," or "monthly between December 2010 and present"). An exact start date and end date would not be required.

Note that, under our proposal, a time period of multiple months is permitted for multiple disclosures to the same recipient for the same purpose, but not a single disclosure. Accordingly, a single disclosure in February 2010 could not be described as "between January 2010 and May 2010." In contrast, three disclosures that began in January 2010 and ended in May 2010 could be described as "between January 2010 and May 2010."

Further, we clarify that the date of disclosure may be descriptive, rather than a specific date. For example, the accounting may provide that a disclosure to a public health authority was "within 15 days of discharge" or "the fifth day of the month following discharge."

We propose at paragraph (a)(2)(i)(B) that the accounting must include the name of the entity or natural person who received the protected health information and, if known, their address. This conforms to the current regulatory language. We are proposing an exception, however, for when providing the name of the recipient would itself represent a disclosure of protected health information about another individual. For example, if a physician's office mistakenly sends an appointment reminder to the wrong patient (and determines that the impermissible disclosure does not require breach notification because it does not compromise the privacy or security of the information), then the accounting may indicate that the disclosure was to "another patient." We believe that the alternative of providing the name of the recipient in this example would unnecessarily disclose the protected health information of the recipient by demonstrating that the recipient is also a patient of the physician practice.

As with the current accounting requirement of the Privacy Rule, we are proposing at paragraph (a)(2)(i)(C) that the accounting must include a brief description of the protected health information that was disclosed. We have proposed a slight revision to the regulatory language, replacing "a brief description of the protected health information disclosed" with "a brief description of the type of protected health information disclosed." This change is intended to reflect that the accounting is only required to provide information about the types of protected health information that were the subject of the disclosure.

We are proposing at paragraph (a)(2)(i)(D) that the accounting include a brief description of the purpose of the disclosure. We are proposing to change the current language from "statement" to "description" to make clear that only a minimum description is required if it reasonably informs the individual of the purpose. For example, "for public health" or "in response to law enforcement request" is sufficient. We propose to retain the language indicating that a copy of a written request may be substituted for a description of the purpose of the disclosure. When a written request provides more information than the description in the accounting, we encourage the covered entity to provide a copy of the request to better inform the individual of the circumstances surrounding the disclosure.

Although individuals would have a right to an accounting of all of the included disclosures occurring within the three years prior to the request, in paragraph (a)(2)(ii) we propose to require that covered entities provide individuals the option of limiting the accounting to a particular time period, type of disclosure, or recipient. We believe that such options are in the best interests of both the individual and the covered entity. Often, individuals are only interested in learning of disclosures that occurred over a limited period of time, such as a particular episode of care or within the past few months. In such cases, the individual is not well served by receiving an accounting that covers three years. Similarly, if an individual is only interested in learning of whether certain types of disclosures have been made (such as to law enforcement) or if a particular person or entity received the individual's information, then it is in both the individual's and covered entity's interests to limit the accounting to the relevant information.

Additionally, as in the current Privacy Rule, an individual may be required to pay for an accounting of disclosures if the covered entity has already provided the individual with an accounting within the prior twelve months. The individual should not have to pay for an accounting report that covers a three-year period if the individual is trying to learn of disclosures that occurred over a more limited period of time. Similarly, we expect that a covered entity can significantly reduce the cost of generating an accounting of disclosures by narrowing the scope of the report to

that which is of interest to the individual.

Covered entities are permitted to also offer other options to individuals for how to limit an accounting request. For example, a covered entity may provide the individual with the option to limit the accounting of disclosures to disclosures by a specific organization, such as disclosures by the covered entity or disclosures by a particular business associate.[3]

3. Implementation Specification: Provision of Accounting

In paragraph (a)(3), we are proposing requirements regarding the provision of an accounting of disclosures, such as the timeframe for providing the accounting, the form of the request, and permissible charges for an accounting. We are proposing three modifications to the existing regulatory requirements: (a) Decreasing the permissible response time from 60 days to 30 days; (b) requiring that covered entities provide individuals with the accounting in the form and format requested by the individual if readily producible (*e.g.,* an electronic copy of the accounting); and (c) clarifying that the covered entity may require the individual to submit the accounting request in writing.

We are proposing to reduce the timeframe for responding to an accounting from 60 days to 30 days. While we have received anecdotal evidence that responding to an accounting request may take a significant number of hours, we have not received information suggesting that it normally takes more than 30 days to respond. Additionally, because we are reducing the scope of the accounting to designated record set information and the length to three years, we believe that a 30-day period is appropriate. In the rare cases where it may take more than 30 days to respond, we are proposing to retain the availability of a 30-day extension. We request comment on whether a shorter 30-day deadline, with a single 30-day extension, will significantly benefit individuals and whether it will place an unreasonable burden on covered entities. Specifically, we request comment on how long covered entities have needed to collect the information necessary for an accounting (including from business associates) and to generate an accounting of disclosures.

Additionally, we are proposing that the covered entity must provide individuals with the accounting in the form (*e.g.,* paper or electronic) and format (*e.g.,* compatibility with a specific software application) requested by the individual if readily producible in such form and format. We expect that many individuals will prefer an electronic copy of an accounting, especially if the accounting includes a large number of disclosures or if the individual may be charged for the accounting and an electronic copy would cost less. If an individual requests the accounting in electronic form and the covered entity is readily able to produce an electronic accounting, then the covered entity must do so. Additionally, if an individual requests a particular format, such as a PDF file or a format compatible with a particular word processor, the covered entity should provide the accounting in such format if readily producible. If the requested form and format is not readily producible, then a covered entity may provide a hard copy of the accounting or the parties may try to determine if another form and format is acceptable. Unlike the access report discussed below, we do not propose to require that the accounting of disclosures be provided in electronic form, unless it is readily producible in such form, because we understand that generating an accounting for disclosures is still a very manual process and the accounting provision applies to both electronic and paper records. However, where covered entities are able to do so (and the individual has not specifically requested a paper copy), we strongly encourage them to provide the individual with a machine readable or other electronic copy of the accounting. As explained further below, we consider machine readable data to mean digital information stored in a standard format enabling the information to be processed and analyzed by computer. We request comment on the burdens associated with providing electronic formats as requested by individuals, machine readable or otherwise.

As with other communications to the individual, the covered entity must implement reasonable and appropriate safeguards to deliver a copy of the accounting to the individual. However, what is reasonable and appropriate will vary based on the capabilities of the covered entity and the preferences of the individual. If the individual asks for an electronic copy of the accounting but does not want the file to be encrypted or password protected, then the covered entity should provide the electronic copy without such protections. The covered entity is not responsible or liable for the information once it is in the individual's possession.

We also propose to clarify that a covered entity may require individuals to make a request for an accounting in writing (which includes electronic requests) provided that the covered entity informs individuals of such a requirement. This same language is currently found in § 164.524 (access of individuals to protected health information) and § 164.526 (amendment of protected health information). We encourage covered entities to create forms for individuals to request an accounting that inform individuals of the information that will be included and allow individuals to narrow the request based on their interests (such as by allowing individuals to request disclosures over a certain period of time, to a certain recipient, or for a certain purpose). We believe that it is in both the covered entity's and individual's best interests to use written requests to narrow accountings, so that the individual only receives the information of interest, and the covered entity does not have the administrative burden of responding to overly broad requests.

Finally, we continue to provide that the covered entity may not charge for the first request for an accounting in a 12-month period, but may charge a reasonable and cost-based fee for providing an accounting in response to subsequent requests in the 12-month period (which may include the reasonable costs of including disclosures by business associates). The proposed rule requires the covered entity to inform the individual at the time of the first accounting request that all subsequent requests in the 12-month period may be subject to a fee. The proposed rule also requires the covered entity to inform the individual of the fee at the time of the subsequent request and to provide the individual with an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

4. Implementation Specification: Law Enforcement and Health Oversight Delay

In paragraph (a)(4), we are proposing to retain the requirement for covered entities to delay the provision of an accounting of disclosures based on an ongoing law enforcement investigation.

[3] We note that proposed § 164.528(b)(2)(ii), discussed below, specifically states that a covered entity may provide the individual with the option to limit the access report to a specific organization. We have not included similar language in the accounting provision because we expect it will be less likely that individuals will be interested in limiting their accounting requests in this fashion. The lack of this regulatory language in § 164.528(a)(2)(ii) should not be interpreted as prohibiting covered entities from offering individuals the option to limit their accounting request by organization.

This request for delay by law enforcement is not subject to challenge. We also clarify in the proposed rule that if law enforcement requests a delay, a covered entity shall still account for all other disclosures in accordance with § 164.528(a) and shall supplement the accounting with information about the law enforcement disclosures upon expiration of the requested law enforcement delay. We propose to no longer include a delay for a health oversight investigation since we are proposing that disclosures for health oversight activities are no longer subject to the accounting requirements.

5. Implementation Specification: Documentation

We propose at paragraph (a)(5) to revise the documentation requirements for the accounting of disclosures. The current rule provides that covered entities must document and retain the information necessary to generate an accounting of disclosures, a copy of the written accounting that is provided to the individual, and the titles of the persons or offices responsible for receiving and processing requests for an accounting by individuals in accordance with § 164.530(j). Section 164.530(j)(1)(ii) provides that if the Privacy Rule requires a communication to be in writing, then the covered entity must maintain the writing or an electronic copy of the writing as documentation. Similarly, § 164.530(j)(1)(iii) provides that if the Privacy Rule requires an action, activity, or designation to be documented, then the covered entity must maintain a written or electronic record of such action, activity, or designation. Section 164.530(j)(2) provides that any documentation required under § 164.530(j)(1) be retained for six years from the date of its creation or the date when it was last in effect, whichever is later. Accordingly, under the current rule, a covered entity must maintain for six years the information necessary to generate an accounting of disclosures, the written accounting that is provided to an individual, and the designation of the persons or offices responsible for receiving and processing accounting requests. In the case of the designation of who is responsible for handling accounting requests, the covered entity must retain the designation for six years from the date when it was last in effect.

We are proposing two changes to the documentation requirements. First, because we are proposing to reduce the accounting period from six years to three years, we do not believe there is a need to retain information that is solely being retained in order to provide an accounting of disclosures for more than three years. Of course, covered entities and business associates may choose to retain this information longer based on other legal requirements or internal policies. Second, we are revising the regulatory language to clarify that a covered entity must retain a copy of the accounting provided to the individual, and not the original accounting document. Accordingly, under the proposed rule, a covered entity must maintain the documentation necessary to generate an accounting of disclosures for three years (rather than for the six-year retention period that is set forth at § 164.530(j)), must retain a copy of any accounting that was provided to an individual for six years from the date the accounting was provided, and must retain documentation of the designation of who is responsible for handling accounting requests for six years from the last date the designation was in effect.

B. Right to an Access Report—Section 164.528(b)

1. Standard: Right to an Access Report

In addition to the right to an accounting of disclosures, we are proposing to provide individuals with a right to receive an access report that indicates who has accessed their electronic designated record set information (this right does not extend to access to paper records). In the below discussion of the proposed right to an access report, we refer to both "access logs" and "access reports." For purposes of this discussion, the access log is the raw data that an electronic system containing protected health information collects each time a user (as the term is defined in the Security Rule at § 164.304) accesses information. The access report is a document that a system administrator or other appropriate person generates from the access log in a format that is understandable to the individual.

We note that an access log also may commonly be referred to as an "audit trail" or "audit log" and an access report is similar to an "audit report." We do not use the terms audit trail or audit log in order to distinguish the access report from documents that are generated by organizations for their internal auditing purposes.

We also note that a covered entity will usually have electronic designated record set information in multiple systems which each maintain separate access logs. Our expectation is that data from each access log will be gathered and aggregated to generate a single access report (including data from business associates' systems).

This proposed right to an access report would implement section 13405(c) of the HITECH Act by providing individuals with information about disclosures through an electronic health record (EHR) for treatment, payment, and health care operations. While the HITECH Act provision only addresses "disclosures" and refers to an EHR, we are exercising our discretion under the more general HIPAA statute to expand this right to uses of information (*e.g.,* electronic access by members of a covered entity's or business associate's workforce) and to all electronic protected health information about an individual in any designated record set. We note that this access report will not encompass all electronic disclosures of protected health information for purposes of treatment, payment, and health care operations. Section 13405(c) is limited to disclosures "through an electronic health record" and does not encompass electronic disclosures outside of the EHR. Similarly, the proposed access report will capture information each time electronic protected health information in a designated record set information is accessed, and therefore will capture each disclosure through an electronic designated record set (by capturing information about who accessed the electronic designated record set), but will not capture electronic disclosures of protected health information that occur outside of electronic designated record set systems.

We propose to expand this privacy right beyond the statutory provision for a number of reasons. First, we believe that individuals are interested in learning who has accessed their information without regard to whether the access is internal (a use) or by a person outside the covered entity and its business associates (a disclosure). We believe that the inclusion of both uses and disclosures in the access report significantly increases the benefits to individuals by providing a more complete picture of who has accessed their information. We do not believe that the inclusion of "uses" of designated record set information in the access report represents an unreasonable burden on covered entities and business associates. In response to our RFI, most covered entity commenters indicated that their system is unable to automatically distinguish between uses and disclosures of information. Accordingly, the inclusion of all access, rather than only access that represents a disclosure, may actually be

less burdensome on covered entities and business associates than the alternative of configuring systems to distinguish between uses and disclosures of information.

We have included all electronic protected health information in a designated record set, rather than only EHR information, because we believe that this greatly improves transparency and better facilitates compliance and enforcement, while placing a reasonable burden on covered entities and business associates. As discussed below, in accordance with the Security Rule, all electronic systems with designated record set information should be creating access logs with sufficient information to create an access report. Regardless of whether the system qualifies as an EHR, we believe that it is reasonable to provide this access log information to individuals upon their requests. We propose to limit the access report requirements to electronic protected health information because we believe that extending the right to paper records would place an unreasonable administrative burden on covered entities since tracking such access is not an automated process and is not currently required under the Security Rule.

We believe that this broader approach adds clarity to compliance and enforcement efforts by avoiding the need to categorize certain electronic systems as EHRs. As health information technology advances, the concept of what constitutes an EHR is in a state of flux. A large integrated delivery system may have a large number of electronic systems containing designated record set information and there is no consensus on which of those systems should be considered part of the EHR. For example, a system may not be considered part of an EHR for purposes of Medicare and Medicaid's meaningful use Stage 1, but may become part of the EHR under Stages 2 or 3. We believe that limiting the right to an access report to an EHR would create too much confusion for covered entities, hinder our enforcement efforts, and lead to confusion for individuals who seek to exercise their privacy rights.

We recognize that our proposal extends the right to an access report to all covered entities and business associates that maintain electronic designated record set information, including covered entities and business associates that do not have systems that could be categorized as EHRs. We believe that this is reasonable since all such covered entities and business associates are required by the Security Rule to maintain access logs and, therefore, should be able to provide this information to individuals in response to requests.

We believe that the administrative burden on covered entities who are complying with the HIPAA Security Rule will be reasonable, in light of their existing obligation to log access to electronic protected health information. Section 164.312(b) of the Security Rule (Standard: Audit Controls) currently requires covered entities to "implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information." Therefore, systems with designated record set information should already be configured to record activities such as when users access information. Additionally, § 164.308(a)(1)(ii)(D) of the Security Rule (Implementation specification: Information system activity review) currently requires covered entities to "implement procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports." Accordingly, covered entities should already be logging access to electronic protected health information and regularly reviewing reports of such access.

We also propose to require covered entities to furnish access reports for business associates that maintain designated record set information. Individuals may have the same interest in learning who, at a business associate, has accessed their information (especially if the individual knows someone employed by the business associate). In response to a request for an access report, a covered entity must contact the business associates that create, receive, maintain, or transmit electronic designated record set information and obtain from them access reports with respect to the individual's information. As with accounting for disclosures under proposed paragraph (a), a covered entity only needs to obtain information from business associates that handle designated record set information (in this case, electronic designated record set information). Based on our proposed accounting and access report provisions, and the current provision at § 164.504(e)(ii) that requires business associates to make available protected health information in accordance with §§ 164.524 and 164.526 (which are both limited to designated record set information), we recommend that covered entities track which of their business associates have designated record set information.

We do not believe that the proposed language will place an unreasonable burden on business associates. Under § 164.314(a)(2)(i)(A) of the current Security Rule, covered entities are required to include in their business associate agreements the requirement that the business associates maintain reasonable and appropriate administrative, physical, and technical safeguards for electronic protected health information. Such safeguards should include the ability to determine who has accessed electronic protected health information. Furthermore, section 13401(a) of the HITECH Act specifically requires business associates to comply with §§ 164.308 (administrative safeguards) and 164.312 (technical safeguards) of the Security Rule. *See also* 75 FR 40,868, July 14, 2010 (proposing regulatory amendments to the Security Rule to require business associates to comply with the Rule). Accordingly, as with covered entities, business associates should have the ability to create an access report that indicates who has accessed an individual's electronic designated record set information.

We note that section 13405(c)(3) of the HITECH Act specifies that a covered entity may provide either an accounting that includes disclosures by business associates or an accounting that is limited to its own disclosures and a list of business associates (with contact information for each business associate). Under the second option, the individual would then need to contact each business associate to learn of any disclosures. We believe that the second option places an undue burden on the individual. First, the individual generally will not have a relationship with many of the business associates and therefore may feel uncomfortable contacting them. Second, some of the business associates may not even have designated record set information and thus may have no information to provide to the individual. Accordingly, we are exercising our general authority under the HIPAA statute to propose that the covered entity's access report include uses and disclosures by business associates of electronic designated record set information maintained by the business associates, rather than merely providing a listing of business associates.

2. Implementation Specification: Content of the Access Report

In paragraph (b)(2), we propose that the access report must set forth: (a) The date of access; (b) the time of access; (c) the name of the natural person, if available, otherwise the name of the

entity accessing the electronic designated record set information; (d) a description of what information was accessed, if available; and (e) a description of the action by the user, if available (*e.g.,* "create," "modify," "access," or "delete"). We expect that any access report will be readily capable of providing the date and time of access and the user name, and in many cases can also provide information about what information was accessed and the user's action (such as create, modify, print, *etc.*).

Our proposal would require the access report to include the date and time of access. We expect that all access logs include this information, so we believe it should be readily available for inclusion in access reports without substantial burden to covered entities and business associates. We note that access logs will sometimes include both the start time and end time for access. We intend for the covered entity to include the start time in the access report, although covered entities are free to also include the end time when it is available.

We propose to require that covered entities include in the access report the name of the natural person who is accessing the information, if available. We recognize that some access logs may not provide the first and last name of the person accessing the information, but instead may rely on a user ID. In such cases we expect, however, that a covered entity can readily match a user ID with a first and last name. We do not propose specific requirements as to how covered entities create their access reports. Accordingly, a covered entity is free to modify their systems (if necessary) to readily produce the first and last name of each user who accesses designated record set information, or may instead choose to perform a match between each user ID and name only in response to a request for an access report.

We note that in some circumstances an access log may only capture the name of an entity, rather than a natural person. For example, when information from an EHR is exchanged with an organization outside of the covered entity, the access log may capture only the name of the organization receiving the information. In such cases, when the name of a natural person is unavailable, the name of an entity that is outside of the covered entity or business associate will suffice.

Additionally, we recognize that an electronic designated record set system may exchange data with another electronic system within the organization. In such cases, we would permit the access log to identify such access by the name of the covered entity in order to reflect that the individual's information was accessed by one of the covered entity's systems. To the extent that the covered entity is able to provide more information, such as a description of the system that is accessing the information, we encourage covered entities to include such information. We recognize that more information than the covered entity's name would be helpful to the individual, but we have concerns about the burden on covered entities if they were to have to describe each internal exchange of information between systems in more detail. In contrast, we believe individuals' interest in such internal exchanges may be limited. We request comment on this issue, particularly the burden of providing identifying information about internal systems and the interests of individuals in learning of such internal exchanges.

We are proposing to include the requirement that an access report include a description of what information in the electronic designated record set was accessed, if this information is available. We recognize that only some access logs may collect this information, and we are not proposing at this time to require covered entities and business associates to revise their remaining systems to collect this data going forward. We note that, because an access report will often reflect the access logs of various systems, an access report may include some entries that identify what information was accessed, while other entries may leave this field blank.

While we recognize that it may be helpful to individuals to learn what information was accessed, we believe that it would be unreasonable to require all covered entities and business associates to modify all of their electronic designated record set systems to collect this information, especially in light of the relatively small number of accounting requests that most covered entities have received to date. We request comment on the availability of this information in current access logs, the importance of the information to individuals, and the potential administrative burden of requiring that access reports include a description of what information was accessed.

Lastly, we propose to require that the access report include a general description of the action taken by the user with respect to the record, if available, such as whether the user created, modified, deleted, or merely accessed the record. This provision is not intended to require covered entities and business associates to include in the access report a description of what use or disclosure was ultimately made with the information accessed or to whom the user provided the information. For example, the access report should not indicate that the user provided a copy of the record to law enforcement.

Unlike an accounting under paragraph (a) of this section, the access report need not include the address of the user (required under paragraph (a) when known) or a brief statement of the purpose of the disclosure. Section 13405(c) of the HITECH Act provides that the Secretary shall only require the collection of information after taking into account the interests of individuals in learning the circumstances under which their protected health information is being disclosed and the administrative burden of accounting for such disclosures. After consideration of our experience in administering the Privacy Rule and the feedback we received from stakeholders over the years and in response to our RFI, we do not propose to require these elements in an access report because we believe that the burden of collecting them outweighs the interests of individuals in learning of them.

We are not requiring access reports to include the address of the user because we do not believe that this information is uniformly collected by current access logs and do not believe that individuals have sufficient interest in this information to warrant adding it. While some access to electronic designated set information will occur outside of a covered entity's facility (including access granted to persons who are not members of the covered entity's workforce) we expect that most access occurs at the covered entity's facility, meaning that the address would be that of the facility. We do not expect that most individuals have a strong interest in learning where their information was accessed, especially where it is mostly accessed at the facility. Rather, we expect that individuals are far more interested in learning who accessed their information rather than where it was accessed. We request comment on the potential burden to covered entities and potential benefit to individuals of requiring the access report to include address information that indicates where the access occurred.

We are not proposing to require that access reports include a description of the purpose of the access. In response to our RFI, a majority of commenters indicated that we should not require that an accounting of disclosures for treatment, payment, and health care operations include the purpose of the

disclosure. Commenters stated that this information is not currently captured when protected health information is accessed, and requiring the information would represent a significant disruption of workflow. The majority of commenters also indicated that individuals did not have a good understanding of terms such as "health care operations." A minority of commenters (approximately 20%, representing consumers and covered entities) indicated that inclusion of the purpose of the disclosure is essential to a meaningful accounting. In addition to the RFI, we have received anecdotal reports that identifying the purpose of a disclosure is sometimes important, but that more often individuals are most interested in learning who has accessed their information.

After consideration of the input that we received in response to the RFI and our experience in administering the Privacy Rule, we believe the burden on covered entities and business associates in identifying the purpose of each access to electronic designated record set information significantly outweighs the benefit to individuals of learning of such information. In almost all cases, covered entities and business associates would need to modify existing systems in order to add the ability to track why a user is accessing electronic designated record set information. These modifications would represent significant time and cost. Once the modifications are made, requiring users to input their reason for accessing electronic protected health information would represent a significant disruption to existing workflow. The cumulative effect of requiring an extra step each time a user accesses electronic designated record set information would be substantial. Furthermore, because there would be no similar requirement to track the reason each time paper records are viewed, such a proposal could represent a significant disincentive to adoption of EHR technology.

In contrast to the burden on all covered entities and business associates, we believe the benefit to individuals would be modest. To date, we understand there have been relatively few requests for accountings of disclosures. While the availability of access reports may lead to an increased number of requests, we would continue to expect that only a small minority of individuals would exercise this right. Of those requests, we expect that many individuals would only be interested in learning who accessed their information, without regard to why the information was accessed. Accordingly, with respect to tracking the purpose of each access to electronic designated record set information, we believe that the substantial burden on all covered entities and business associates significantly outweighs the benefits to a relatively small number of individuals who would seek to find out why their information was accessed. We note that, with respect to the disclosures that we believe to be of most interest to individuals (such as impermissible disclosures for which the individual did not receive breach notification or disclosures to law enforcement of designated record set information), the individual would have the right to a full accounting under paragraph (a). We request comment on our proposal to not require covered entities and business associates to include a description of the purpose of access in access reports.

We note that we have not proposed that the access report include the ultimate recipient of the electronic protected health information, unless the recipient is the natural person or entity with direct access to the electronic protected health information (see clarification above regarding documenting action by the user in the access report). We believe that this information, as well as the purpose of the access, is generally not captured by systems currently available today. As such, we have not proposed the same exceptions as for the accounting of disclosures requirement (*e.g.,* for a law enforcement delay, or for reports to a government agency of suspected child abuse), since information that may merit an exception would not be included within the access report.[4] Even if such exceptions were included, it is not clear to us that there would be a practical way in which to identify the excepted accesses in order to exclude them from the access report, again because the purpose and ultimate recipient are not recorded. We request comment on our assumption that systems do not record information about the purpose of the access and ultimate recipient of the information within audit logs. We additionally request comment on ways in which such accesses, if excepted from the access report, could be identified and excluded in an automated way.

Based on the above, we expect that the proposed right to an access report will require minimal, if any, changes to existing information systems. Covered entities and business associates who are compliant with the Security Rule or their business associate agreements should already be logging the information necessary for an access report and should be able to generate such a report. As noted earlier, we recognize that electronic designated record set information will often reside in a number of distinct systems that maintain separate access logs. There may be significant burden in aggregating this data into a single access report. However, we believe that this administrative burden is reasonable in light of the interests of individuals in learning who has accessed their protected health information. Additionally, the burden of generating access reports will be directly proportionate to the interests of individuals; if few individuals request access reports, then covered entities will rarely need to undertake the burden of generating an access report. We request comment on the above conclusions.

In paragraph (b)(2)(ii), we are proposing to require covered entities to provide individuals with the option to limit the access report to a specific date, time period, or person. For example, an individual may request that the access report be limited to whether a specific person (such as a family member) accessed the individual's electronic designated record set information over a specific time period (such as within the last two months). We believe that this requirement will prove beneficial to both individuals and covered entities. It will be beneficial to individuals by allowing them to better focus on information of interest. If an individual is only interested in learning of whether a particular person accessed the individual's health information over a specific time period, there is no reason for the individual to receive a voluminous access report filled with other information.

Similarly, we believe this requirement will prove beneficial to covered entities by minimizing the information that the covered entities need to collect. We expect that audit systems can readily produce an access report limited in this fashion. Therefore, we believe that it would be an unnecessary use of the covered entity's and business associates' resources to create a broad access report when the individual is only seeking very specific information.

We are recommending—although not requiring—that covered entities offer individuals the option to limit the access report to specific organizations. For example, if the individual is not interested in learning of access at

[4] We note that to the extent a covered entity nonetheless has a reasonable belief that providing certain information in the access report to a personal representative of an individual could endanger the individual, it may elect not to provide the information pursuant to § 164.502(g)(5) of the Privacy Rule.

business associates, there is no reason for the covered entity to contact business associates to obtain their access reports. Conversely, if the individual is interested in learning about access at a particular business associate, then the covered entity need not run an internal access report nor obtain access reports from business associates other than the one that is of interest to the individual.

We are also proposing, in paragraph (b)(2)(iii), that the covered entity provide the access report in a format that is understandable to the individual. This would be a format that is structured in a manner so that it reasonably can be understood by individuals without an external aid. This proposal does not require any summary information or additional content, such as information about the role of each person who accesses the individual's protected health information.

The following is an example of an access report that is formatted so as to be understandable to the individual:

Date	Time	Name	Action
10/10/ 2011.	02:30 p.m.	John, Andrew	Viewed

In contrast, the following is the same information that is not in a format that is understandable to the individual:

201110101430JOHNANDREW3

The above is not understandable because it is coded and requires the use of an external guide.

3. Implementation Specification: Provision of the Access Report

We are proposing at paragraph (b)(3)(i) the same timing requirements for provision of an access report as for provision of an accounting of disclosures. Accordingly, a covered entity would have 30 days to provide the access report, including the logs of business associates that create, receive, maintain or transmit electronic designated record set information. The covered entity may extend the time by 30 days where necessary, as long as the covered entity provides the individual with a written statement that includes the reason for the delay and the date by which the covered entity will provide the access report. The covered entity is only permitted one extension of time.

We are proposing at paragraph (b)(3)(ii) that the covered entity must provide the access report in the machine readable or other electronic form and format (*e.g.,* compatibility with a specific software application) requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual. If the individual does not agree to accept the readable electronic format that is readily producible by the covered entity, the covered entity may provide a readable hard copy. If the individual requests the access report in hard copy form, the covered entity must provide the individual with the access report in a readable hard copy form. For these purposes, we propose to provide that machine readable data is digital information stored in a standard format enabling the information to be processed and analyzed by computer. For example, this would include providing the access report in the format of MS Word or Excel, text, HTML, or text-based PDF, among other formats. We request comment on the ability of covered entities to provide access reports in machine readable or other electronic formats.

As with the accounting of disclosures, we are proposing that the covered entity may not charge for providing the first access report to an individual in any 12-month period, but may charge a reasonable, cost-based amount for each additional access report that is requested within the 12-month period (which may include the reasonable costs of including access report information of business associates). The proposed rule requires the covered entity to inform the individual at the time of the first access report request that all subsequent requests in the 12-month period may be subject to a fee. The proposed rule also requires the covered entity to inform the individual of the fee at the time of the subsequent request and to provide the individual with an opportunity to withdraw or modify the request in order to avoid or reduce the fee.

We are also proposing, in paragraph (b)(3)(iv), that the covered entity may require individuals to make requests for an access report in writing provided that it informs the individual of such a requirement. This same language is currently found in § 164.524 (access of individuals to protected health information) and § 164.526 (amendment of protected health information). As we discussed with respect to the provision of the accounting of disclosures, we encourage covered entities to create forms for individuals to request an access report that provides information about the information the individual will receive and allows the individual to narrow the request based on the individual's interests. We believe that it is in both the covered entity's and individual's best interests to use written requests to narrow access reports, so that the individual only receives the information of interest, and the covered entity does not have the administrative burden of responding to an overly broad request.

4. Implementation Specification: Documentation

We are proposing at paragraph (b)(4) the same documentation requirements for access reports as for accountings of disclosures. Accordingly, we propose that a covered entity or business associate must retain the documentation needed to produce an access report (*e.g.,* the necessary access log) for three years (rather than for the six-year retention period that is set forth at § 164.530(j)), the covered entity must retain for six years copies of access reports that were provided to individuals, and must maintain a designation of the persons or offices responsible for receiving and processing requests for access reports for six years from the last date the designation was in effect.

5. Accounting for Disclosures That Are Made Through Electronic Health Information Exchange

In addition to the right to an access report, we also considered providing individuals with the right to receive a full accounting for treatment, payment, and health care operations disclosures through an EHR when such disclosures are made through electronic health information exchange (*i.e.,* disclosures that originate from an EHR that are received by another electronic system). For example, such a proposal would have required a full accounting, including a description of the purpose of the disclosure, when a covered entity or business associate transmits some or all of an EHR to another electronic system (such as another covered entity's EHR, a pharmacy, laboratory, or health plan). This would have included health information exchange when the disclosure is in response to a query, and health information exchange that is initiated by the disclosing covered entity.

After careful consideration of this option, we concluded that accounting for such disclosures at this time would be overly burdensome when compared to the potential benefit to individuals. Especially for EHR technology that is not certified pursuant to ONC standards and certification criteria, covered entities might need to make substantial and costly modifications to their existing EHR systems in order to track the purpose of disclosures for treatment, payment, and health care operations.

However, as electronic health information exchange expands and standards for such exchange are adopted, we intend to work with ONC to assess whether such standards should include information about the purpose of each exchange transaction. Adoption of such standards may significantly reduce the burden on covered entities to account for treatment, payment, and health care operations disclosures through electronic health information exchange. We then intend to revisit this issue and determine whether the accounting requirements should be revised to encompass such disclosures, in light of the interests of individuals and the reduced burden on covered entities.

We note that, despite not proposing to adopt the above option with respect to treatment, payment, and health care operations disclosures, individuals still have a right to learn of disclosures through electronic health information exchange if such disclosures fall under proposed paragraph (a)(1), such as disclosures for public health. Additionally, each time electronic designated record set information is accessed for purposes of electronic health information exchange (regardless of the purpose of the exchange), the date, time, and identity of the user will be captured in the access report.

C. Confidentiality of Patient Safety Work Product

We recognize that there may be times when a covered entity or business associate may disclose electronic designated record set information to a patient safety organization pursuant to the Patient Safety and Quality Improvement Rule at 42 CFR part 3, which implements the Patient Safety and Quality Improvement Act of 2005.

A member of a covered entity's or business associate's workforce may access electronic designated record set information for patient safety activities under 42 CFR part 3, or a covered entity may permit employees of a patient safety organization to directly access electronic designated record set information. The fact that a workforce member or other appropriate person uses or discloses protected health information for patient safety activities may constitute patient safety work product under 42 CFR part 3, and thus may fall under the privilege and confidentiality provisions of the Patient Safety and Quality Improvement Rule. It is not our intention to interfere with those protections.

Accordingly, we propose at paragraph (c) that a covered entity shall exclude from an accounting or access report under § 164.528 any information that meets the definition of patient safety work product at 42 CFR 3.20. This will avoid any conflicts between the two sets of regulations.

D. Notice of Privacy Practices—Section 164.520

Under the Privacy Rule at § 164.520, a covered entity is required to provide an individual with a notice of privacy practices that includes descriptions of the individual's rights under the Privacy Rule. Section 164.520(b)(1)(iv)(E) provides that the notice must contain a statement of the individual's right to receive an accounting of disclosures of protected health information as provided by § 164.528. We are proposing to revise § 164.520(b)(1)(iv)(E) to also require a statement regarding an individual's right under the proposed rule to receive an access report.

This proposed change to a covered entity's notice of privacy practices would constitute a material change to the notice. Section 164.520(b)(3) requires covered entities to promptly revise and distribute the notice as outlined in § 164.520(c) where there is a material change to the notice. With respect to health care providers with a direct treatment relationship with individuals, § 164.520(c)(2)(iv) requires the provider to make the notice available upon request on or after the effective date of the revision and, if the provider maintains a physical service delivery site, promptly have the notice posted and available at the delivery site for individuals to take with them. Health plans are currently required by the Privacy Rule to distribute notices to current members within 60 days of a material revision.

As discussed below in Section V, we are not proposing to require covered entities and business associates to comply with the access report requirements until January 1, 2013, or January 1, 2014, depending on the age of their electronic designated record set systems. Therefore, covered entities need not revise their notices of privacy practices to reflect the right to receive an access report until the earliest applicable compliance date.

We recognize that health plans may incur significant costs informing individuals of a change to their notices of privacy practices within 60 days of the effective date of the change. In the Department's notice of proposed rulemaking to implement the privacy provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA) (74 FR 51703–51704) and its HITECH Act notice of proposed rulemaking (75 FR 40898–40899), the Department solicited comment on ways to inform individuals of changes to privacy practices without unduly burdening health plans. The Department has been considering a number of options in response to those comments, including allowing health plans to notify individuals of revisions to the notice of privacy practices (either by providing the revised notice or information about the material change and how to obtain the revised notice) in their next annual mailing to individuals then covered by the plan, rather than within 60 days of the material change. Any modifications to the 60-day time period for health plans will be addressed in those final rules. If any changes are made to the 60-day time period, it is expected that the change would then also apply to this rule when final.

However, even if the 60-day deadline to inform individuals of material changes is not modified by the Department in the other HITECH Act and/or GINA rulemakings, we believe that the cost to health plans to revise and distribute notices under this rule can be minimized in light of the lengthy compliance period we are considering. For example, a health plan can minimize its mailing costs by including notice of the new right to an access report in an annual mailing prior to the date that notification is required under § 164.520(c)(1)(i)(C) (i.e., prior to March 2, 2013, or 2014, the dates that are 60 days after the 2013 and 2014 compliance deadlines).

V. Effective and Compliance Dates

We propose separate compliance dates for the changes to the accounting of disclosures requirements and for the right to receive an access report. We propose that covered entities and business associates will be required to comply with the revised accounting of disclosures provision by no later than 180 days after the effective date of the final rule. The effective date of the final rule will be 60 days after publication in the **Federal Register**, so covered entities and business associates will have 240 days after publication of the final rule to come into compliance. This is consistent with our proposed changes to § 160.105 found in the notice of proposed rulemaking published at 75 FR 40,868, July 14, 2010. That proposal would establish at § 160.105 a 180-day compliance period for future modifications to the HIPAA Rules, unless otherwise specifically provided.

We believe that this compliance period is reasonable in light of current obligations on covered entities and business associates. For example, covered entities should currently be

able to produce an accounting of disclosures on request. Business associates should currently be able to provide accounting information to a covered entity on request. The proposed changes to the existing accounting for disclosures requirements generally would streamline the requirements and otherwise make compliance easier, as well as shorten the accounting period from six years to three years. Therefore, we expect that covered entities and business associates can implement these changes expeditiously.

We propose to require covered entities and business associates to produce an access report upon request beginning January 1, 2013, for any electronic designated record set systems that were acquired after January 1, 2009. Section 13405(c)(4)(B) of the HITECH Act provides that a covered entity that acquired an EHR after January 1, 2009, must account for disclosures for treatment, payment, and health care operations beginning January 1, 2011 (or the date that it acquires an EHR after January 1, 2011). The statute authorizes the Secretary to extend this date to no later than 2013. Because we are proposing to provide individuals with a right to an access report covering any electronic designated record set information, rather than only access to an EHR, we are basing the compliance date on when a covered entity acquires a particular electronic designated record set system. Additionally, because we recognize that covered entities will require time to create policies and procedures to generate an access report upon request, we are exercising our statutory authority and extending the 2011 date to January 1, 2013.

We propose to require covered entities and business associates to produce an access report upon request beginning January 1, 2014, for electronic designated record set systems that were acquired on or before January 1, 2009. Section 13405(c)(4)(A) provides that a covered entity that acquired an EHR as of January 1, 2009, must account for disclosures for treatment, payment, and health care operations beginning January 1, 2014. The statute authorizes the Secretary to extend this date to no later than 2016. For the same reasons as discussed above, we are making the compliance deadline contingent on when an electronic designated record set system was acquired. We do not believe that it is necessary to extend the January 1, 2014 date.

Covered entities and business associates should already be logging access to electronic protected health information and should have the ability to generate access reports pursuant to the Security Rule. We recognize that covered entities and business associates may need time to make some modifications to systems and processes, such as creating a process to aggregate data from multiple access logs into a single access report. However, we believe that the above dates of January 1, 2013, and January 1, 2014, will provide sufficient time. We note that this will also provide covered entities with time to revise their notices of privacy practices.

We recognize that, pursuant to these compliance dates, during 2013 a covered entity or business associate may be required to produce an access report that includes access to some electronic designated record set systems (those acquired after January 1, 2009) but not others (those acquired as of January 1, 2009). We encourage covered entities and business associates in such circumstances to provide access reports that include all designated record set systems during 2013, even if the covered entity or business associate is not required to include some of the electronic systems at that time.

Under our proposed rule, access reports must cover a three-year period and covered entities and business associates must retain their access log information for three years. Because covered entities should already be maintaining access logs pursuant to the Security Rule, we believe that it is reasonable to require covered entities to produce access reports, upon request, covering access over the prior three years beginning on the proposed January 1, 2013, and January 1, 2014, compliance dates. We request comment on whether covered entities will be able to generate access reports covering the preceding three years on these compliance dates.

VI. Regulatory Analyses

A. Introduction

We have prepared a regulatory impact statement in compliance with Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism.

1. Executive Order 12866

Executive Orders 13563 and 12866 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

A regulatory impact analysis must be prepared for major rules that have economically significant effects ($100 million or more in any one year) 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 government or communities (58 FR 51741).

We estimate the effects of the requirement for covered entities (including indirect costs incurred by third party administrators, which frequently send out notices on behalf of health plans) to issue new notices of privacy practices, would result in new total costs of $20.2 million. We estimate that the private sector would bear almost the entirety of this new total cost, with State and Federal plans bearing a minimal share. While we anticipate the issuance of new notices of privacy practices to be the predominant source of additional costs for covered entities, there may be the potential for covered entities to incur other costs which we are unable to quantify at this time, as discussed further below. For example, we request more information on the number of anticipated accounting of disclosures and access reports; the additional costs, if any, of offering them in electronic formats (both machine readable or non machine readable); the burden of tracking access to electronic designated record set information; and any other additional changes to existing systems that would be necessary.

Although we expect the economic impact of issuing privacy notices and the possibility of other non-quantifiable costs and savings discussed in the regulatory analysis below to be less than $100 million annually, we nevertheless conducted analysis of the costs of the proposed regulations.

2. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. We present our regulatory

flexibility analysis of this proposed rule in Section D below.

The RFA generally defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. Because 90 percent or more of all health care providers meet the SBA size standard for a small business or are nonprofit organizations, we generally treat all health care providers as small entities for purposes of performing a regulatory flexibility analysis. The SBA size standard for health care providers ranges between $7.0 million and $34.5 million in annual receipts.

With respect to health insurers and third party administrators, the SBA size standard is $7.0 million in annual receipts. While some insurers are classified as nonprofit, it is possible they are dominant in their market. For example, a number of Blue Cross/Blue Shield insurers are organized as nonprofit entities; yet they dominate the health insurance market in the States where they are licensed. In addition, we lack the detailed information on annual receipts for insurers and plan administrators and, therefore, we do not know how many firms qualify as small entities. We welcome comments on the number of small entities in the health insurer and health plan administrator market.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates would require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly those "Federal mandate" costs resulting from: (1) Imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs. We estimate the costs of the proposed rule will be approximately $20.2 million, largely due to the revision of privacy notices. This amount is not sufficient to warrant an analysis of costs and benefits under the UMRA provisions. However, as we explained under EO 12688, we are conducting an analysis of the costs that could result from the proposed rule.

4. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

The Federalism implications of the Privacy and Security Rules were assessed as required by Executive Order 13132 and published as part of the preambles to the final rules on December 28, 2000 (65 FR 82462, 82797) and February 20, 2003 (68 FR 8334, 8373), respectively. Regarding preemption, the preamble to the final Privacy Rule explains that the HIPAA statute dictates the relationship between State law and Privacy Rule requirements, and the Rule's preemption provisions do not raise Federalism issues. The HITECH Act, at section 13421(a), provides that the HIPAA preemption provisions shall apply to the HITECH provisions and requirements.

We do not believe that this rule will impose substantial direct compliance costs on State and local governments that are not required by statute. The proposed rule would only apply to State and local government entities that are covered entities under the HIPAA Privacy and Security Rules. Such entities should already be maintaining access logs with the information necessary to generate an access report. Accordingly, the costs attributable to the new right to receive an access report should be limited to the cost of responding to requests for such a report (*e.g.*, the burden of aggregating information from multiple access logs into a single access report). This cost should be small, in light of the relatively small number of requests that we expect covered entities to receive from individuals.

State and local government entities that are covered entities may also incur some cost in revising their notices of privacy practices. Based on the length of time provided prior to the January 1, 2013, and January 1, 2014, compliance dates, we expect that such covered entities may minimize their costs by informing individuals of the change to the notice of privacy practices as part of an annual mailing.

In considering the principles in and requirements of Executive Order 13132, the Department has determined that these proposed modifications to the Privacy Rule will not significantly affect the rights, roles, and responsibilities of the States.

B. Why are we proposing these regulations?

Section 13405(c) of the HITECH Act directs the Secretary to promulgate regulations requiring covered entities to account for disclosures of protected health information through an EHR for purposes of treatment, payment, and health care operations. In issuing the regulations, the Secretary is to balance the burden imposed on covered entities with the interests of individuals to know about the disclosure of their protected health information.

We are proposing these regulations to provide individuals with the expanded right to an accounting that is provided for in section 13405(c), to provide individuals with a more complete accounting through the right to receive an access report that includes information on each time a covered entity's or business associate's electronic designated record set information is accessed, and to improve the workability and effectiveness of the current accounting provision through a number of additional changes.

1. What are the current regulations?

The current rule at § 164.528 provides an individual the right to an accounting of disclosures of his or her protected health information. A disclosure is defined at § 160.103 as "the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information." An individual whose protected health information has been disclosed has the right to receive an accounting of such disclosures. This accounting does not include certain categories of disclosures, such as those for treatment, payment, or health care operations, based on an authorization, or to family, friends, and others involved in the individual's care (for a full list of the current exemptions from the accounting requirement, see § 164.528(a)(1)).

Additionally, §§ 164.308 and 164.312 of the Security Rule require covered entities to maintain and periodically review reports of who accesses electronic protected health information. Under current regulations, while covered entities are required to log access to individuals' electronic protected health information, covered entities do not have to provide the information from these access logs to individuals.

2. What are we proposing?

Under the proposed § 164.528, the section will be divided into an individual's right to receive an accounting of disclosures and a right to receive an access report. The access report would be limited to only electronic protected health information in a designated record set. For each time that electronic designated record set information is accessed, whether by a member of the covered entity's or business associate's workforce (a use) or by someone outside the organizations (a disclosure), an access report would include the date and time of the access, the identity of the person accessing the information, and, if available, a description of the information that was accessed and what actions were taken while in the system (*e.g.*, create, modify, view, print, *etc.*). The covered entity would be required to permit the individual to narrow the request for an access report to a specific time frame or person. Covered entities would be required to provide the access report in the electronic form and format requested by the individual, if readily producible, unless otherwise requested by the individual in such other form and format as agreed to by the parties.

The accounting of disclosures would provide additional information than what would be provided in an access report for certain categories of disclosures, providing the date of the disclosure, what information was disclosed, the recipient of the information, and the purpose for the disclosure—for example, law enforcement. This is largely the same information as is currently required for an accounting of disclosures, with minor modifications. The accounting of disclosures would continue to apply to both paper and electronic protected health information.

The requirements governing the accounting of disclosures would be modified in several ways. The current requirement to disclose six years of disclosures would be reduced to three years. Covered entities would no longer be required to provide the full accounting for certain categories of disclosures that are currently subject to the accounting requirement, such as disclosures that are required by law and for health oversight purposes (though limited information about such disclosures would be captured in the access report to the extent that they involve direct access to electronic designated record set information). The accounting requirement would be limited to disclosures of information about an individual in a designated record set, rather than disclosures of any protected health information. The proposal would reduce the time permitted for a covered entity to respond to a request for an accounting of disclosures from 60 days to 30 days. A covered entity still could use a one-time extension of 30 days. A covered entity also would be required to provide individuals with the option of limiting their request to a specific timeframe, type of disclosure, or recipient. Finally, covered entities would be required to provide the accounting in the form and format requested by the individual if readily producible, otherwise in a readable hard copy form or such other form and format as agreed to by the parties.

3. What would be the impact of changes to accounting of disclosures requirements?

We believe that the proposed changes will benefit individuals by reducing the amount of time it takes for them to receive an accounting of disclosures. While we propose to exclude a number of categories of disclosures from the accounting requirements, as discussed in the preamble we have proposed to exclude disclosures that we believe are of limited interest to individuals. Accordingly, we believe the more limited scope of the accounting provision will not significantly diminish the benefit of the accounting, since individuals will continue to have a right to receive a full accounting for the disclosures that are most likely to have an immediate impact on their interests, such as disclosures for law enforcement, judicial proceedings, or public health investigations.

Based on our contacts with covered entities we have learned that the process of tracking disclosures involves a considerable amount of effort because data in different systems must be linked manually regardless of whether the data are stored electronically or as hard copy. We expect that the proposed changes to the accounting of disclosures requirements—to reduce the time to track disclosures from six years to three and eliminating the requirement to account for a number of categories of disclosures—will reduce this burden on covered entities and their business associates. The responses to the RFI indicated that covered entities receive very few requests for accounting of disclosures. However, we have no information on the number of disclosures covered entities and their business associates make annually. Therefore, we are unable to estimate the reduced burden the proposed regulatory changes will generate. We are also unable to estimate the additional burdens, if any, of offering these accountings in a machine readable or other electronic format (unless the individual requests otherwise). We ask for public comments or information that will help us estimate these burdens.

We have limited information on how long it takes to respond to an accounting request under the current rule. The information that we have received has suggested that not more than 30 days is needed to respond to an accounting request under the current rule. Furthermore, our proposed rule will reduce the scope of information that is subject to an accounting. Accordingly, we believe there will be little burden on covered entities to respond to requests in 30 days, rather than 60 days. In circumstances where more than 30 days is needed, we continue to permit a single 30-day extension. We solicit public comment on this issue.

4. What would be the impact of adding the right to an access report?

We believe that the proposed right to an access report will provide a significant benefit to all individuals by providing them a means to learn who has accessed their electronic protected health information. This offers a significant benefit over the current accounting rule in that it provides individuals an opportunity to learn of access by members of the covered entity's workforce.

Almost all information required to satisfy a request for an access report is currently required under the Security Rule at §§ 164.308(a)(1)(ii)(D) and 164.312(b). We expect that the additional burden to covered entities will consist of, in response to a request, generating access reports for each electronic designated record set system and aggregating this information into a single electronic access report. The cost to covered entities to prepare an access report would be directly tied to the number of requests. Based on the experience covered entities have reported with requests for accountings of disclosures, we anticipate few requests for access reports. Therefore we expect the costs to generate access reports will be minimal. We request comment on the number of anticipated access reports, the burden of tracking access to electronic designated record set information, including whether our proposal will have any unintended effects by requiring significant changes to existing systems, and the burden caused by generating an access report.

The covered entity must produce within 30 days the access report in the electronic form and format requested by

the individual, if readily producible, unless the individual requests another mutually agreed upon format. We thus also request comment on the additional burden, if any, of providing electronic access reports (either in machine readable or other electronic format).

Some covered entities' systems may log a user ID but not a name, in which case there will be a burden on the covered entity to convert the identifier into a user name. The requirement to include in the access report information about users' actions while within the system and what information was accessed should create minimal burden since we only propose to require the inclusion of this information if it is available in the access logs.

The provision permitting individuals to limit their requests to a time period or person may limit the burden to produce an access report. Yet, modifying a standard report may require additional programming which would increase burden on the covered entity and business associates. We solicit comment on the effects of this provision.

5. What alternatives did we consider?

In light of the language of section 13405(c), we considered applying the access report requirements to only disclosures for treatment, payment, and health care operations through an EHR. We chose to expand the requirements for access reports to all electronic designated record set information because we believe that all such systems should be capable of logging access. We also believed that limiting the rule to EHR systems would lead to confusion among covered entities, business associates, and individuals regarding which systems were subject to the accounting provision. We chose to include uses, in addition to disclosures, because we believe that individuals have an interest in learning of access to their information by members of a covered entity's and business associate's workforces, and because it may be difficult for covered entities and business associates to distinguish between uses and disclosures through the use of automated systems.

We also considered requiring access reports to include the purpose of the disclosure. However, we believed the burden of collecting such information significantly outweighed the interests of most individuals in learning of such information, especially with respect to older EHR systems (where the burden of modifying systems may be highest). We will continue to reassess this option and to work with ONC to evaluate whether information about the purpose of disclosures should be part of future standards, such as standards governing electronic health information exchange.

C. How much will it cost covered entities to notify individuals of their new privacy rights?

Covered entities must provide individuals with notices of privacy practices that detail how the covered entity may use and disclose protected health information and individuals' rights with respect to their own health information. Beginning on January 1, 2013, individuals would have the right to receive a report of who accessed their electronic protected health information that covers a three-year period from the date of the request. Covered entities would have to revise their privacy notices to reflect this change.

The cost analysis for revising privacy notices is divided into an analysis of provider costs and an analysis of plan and insurer costs. For providers, given that the requirements described in this rule only require modification of one sentence in the notice of privacy practices, we estimate that drafting the updated notices will require approximately one-third of an hour of professional, legal time at approximately $90 per hour—or $30—that includes hourly wages of $60 plus 50 percent.[5] The total cost for attorneys for the approximately 669,000[6] health care providers in the U.S. is, therefore, expected to be approximately $20 million. Pursuant to § 164.520(c)(2)(iv), providers will be required to make the revised notice available upon request on or after the effective date of the revision. We anticipate publishing the final rule in late 2011 which should give providers enough time before the January 1, 2013, and 2014 compliance dates to exhaust current inventories of privacy notices and adequately manage the transition to revised notices. Therefore, we believe that this should not represent any additional burden, with respect to printing and distribution, above and beyond the existing requirements to distribute notices of privacy practices. Therefore, the total cost for providers is approximately $20 million. Because of the uncertainty surrounding the costs for revising privacy notices, we invite public comment on our analysis.

For health plans, we expect the cost of notifying policy holders to be minimal. Pursuant to § 164.520(c)(1)(i)(C), health plans must notify individuals within 60 days of a material change to its notice of privacy practices. Health plans will have until March 2, 2013, at the earliest (60 days after the January 1, 2013, compliance deadline), to notify members of the change to the privacy notice. We expect that this may be done in one of the health plans' annual mailings in order to minimize printing and distribution costs. Additionally, as indicated in Section IV.D., we are considering changes to the Privacy Rule's 60-day notification requirement for health plans, which may further reduce burden. Accordingly, we expect the only costs to be incurred would be for drafting the privacy policy notice revision. The costs should be similar to those for providers; that is, the cost of one third of an hour for an attorney to draft the revision. The cost we estimated would be $30 for each plan issuer notice. There may also be costs for plan issuers to post the changes on their web sites and to include language describing the changes and referring to the web site in their annual notices of plan changes. However, we believe the costs would be minimal.

With the exception of a few large health plans, most health plans do not self-administer their plans. The majority of plans are administered either by health insurance issuers (approximately 1,000) or by third party administrators that act on their behalf in the capacity as business associates. We identified approximately 3,500 third party administrators acting as business associates for approximately 446,400 ERISA plans identified by the Department of Labor. In addition, the Department of Labor identified 20,300 public non-Federal health plans that may use third party administrators. Almost all of the public and ERISA plans, we believe, employ third party administrators to administer their health plans. While the third party administrators will bear the direct costs of issuing the revised notices of privacy practices, the costs will generally be passed on to the plans that contract with them. Those plans that self-administer their own plans will also incur the costs of issuing the revised notices. We do not

[5] *http://www.bls.gov/oes/2008/may/oes231011.htm* for lawyers. The hourly rate + 50% is intended to account for fringes and overhead in addition to the standard hourly wages.

[6] We identified 673,324 entities that must prepare and deliver notices of privacy practices that are shown in Table 1 below. This includes 668,757 HIPAA covered entities that are health care providers, including hospitals, nursing facilities, doctor offices, outpatient care centers, medical diagnostic, imaging service, home health service and other ambulatory care service covered entities, medical equipment suppliers, and pharmacies. For the purposes of our calculation, we have rounded this number to 669,000. Table 1 also includes 4,567 health insurance carriers and third party administrators working on behalf of covered health plans. The cost estimates for these entities are addressed later.

know how many plans administer as well as sponsor health plans and invite comments on the number of self-administered plans; however, unless there were many such plans it would not have much effect on these estimates.

For the approximately 4,500 health insurance issuers and health plan administrators, we anticipate the cost of revising the change in the privacy policy notice to be approximately $135,000 (4,500 plans x $30 per draft revision). Although there may be costs associated with notifying enrollees of the change to the notice, we believe the cost should be minimal based on health plans including such notification in their annual plan update notices. We request public comment on our assumptions and analysis.

The total estimated cost for both providers and health plans to notify individuals and policy holders of changes in their privacy rights is approximately $20.2 million.

TABLE 1—NUMBER OF ENTITIES BY NAICS CODE [1]

NAICS	Providers/Suppliers	Entities
622	Hospitals (General Medical and Surgical, Psychiatric, Substance Abuse, Other Specialty)	4,060
623	Nursing Facilities (Nursing Care Facilities, Residential Mental Retardation Facilities, Residential Mental Health and Substance Abuse Facilities, Community Care Facilities for the Elderly, Continuing Care Retirement Communities).	34,400
6211–6213	Office of MDs, DOs, Mental Health Practitioners, Dentists, PT, OT, ST, Audiologists	419,286
6214	Outpatient Care Centers (Family Planning Centers, Outpatient Mental Health and Drug Abuse Centers, Other Outpatient Health Centers, HMO Medical Centers, Kidney Dialysis Centers, Free-standing Ambulatory Surgical and Emergency Centers, All Other Outpatient Care Centers).	13,962
6215	Medical Diagnostic, and Imaging Service Covered Entities	7,879
6216	Home Health Service Covered Entities	15,329
6219	Other Ambulatory Care Service Covered Entities (Ambulance and Other)	5,879
n/a	Durable Medical Equipment Suppliers [2]	107,567
4611	Pharmacies [3]	60,395
524114	Heath Insurance Carriers	1,045
524292	Third Party Administrators Working on Behalf of Covered Health Plans	3,522
Total Entities		673,324

[1] Office of Advocacy, Small Business Administration, *http://www.sba.gov/advo/research/data.html*.
[2] Centers for Medicare and Medicaid Service covered entities.
[3] The National Association of Chain Drug Stores.

D. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies that issue a proposed rule to analyze and consider options for reducing regulatory burden if the regulation will impose a significant burden on a substantial number of small entities. The Act requires the head of the agency to either certify that the rule would not impose such a burden or perform a regulatory flexibility analysis and consider alternatives to lessen the burden.

The proposed rule would have an impact on covered health care providers, health insurance issuers, and third party administrators acting on behalf of health plans, which we estimate to be 673,324. Of the approximately $20.2 million in costs we are able to identify, the private sector will incur approximately 100 percent of the costs, or $20.2 million. The average cost per covered entity is therefore approximately $30. We do not view this as a significant burden. We note that the 3,500 third party administrators included in this calculation serve as business associates to the approximately 446,000 ERISA plans, most of which are small entities. We have no information on how many of these plans self-administer, and we request any data the public may provide on this question. Based on the relatively small cost per covered entity, the Secretary certifies that the proposed rule would not have a significant impact on a substantial number of small entities. However, because we are not certain of all the costs this rule may impose or the exact number of small health insurers or third party administrators, we welcome comments that may further inform our analysis.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

a. Whether the information collection is necessary and useful to carry out the proper functions of the agency;

b. The accuracy of the agency's estimate of the information collection burden;

c. The quality, utility, and clarity of the information to be collected; and

d. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section are to be considered. We explicitly seek, and will consider, public comment on our assumptions as they relate to the PRA requirements summarized in this section. To comment on this collection of information or to obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your comment or request, including your address and phone number, to *sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

1. Abstract

Section 13405(c) of the HITECH Act requires the Secretary to promulgate regulations to require covered entities to account for disclosures to carry out treatment, payment, and health care operations through an EHR. In this

notice of proposed rulemaking, we propose to implement modifications that are partly required by section 13405(c) of the HITECH Act and partly based on our general authority under HIPAA by requiring covered entities to provide an individual with an access report upon request that includes information about each time that electronic protected health information in a designated record set is accessed. We also propose, based on our general authority under HIPAA, to modify the existing right to an accounting of disclosures to improve the effectiveness and workability of the provision. We seek public comment on our proposals.

We anticipate that the paperwork burdens on covered entities to comply with this proposed rule will include revising notices of privacy practices and providing accounting of disclosures and access reports to individuals upon request. The estimated annualized burden table below was developed using the same estimates and workload assumptions in the impact statement in the section regarding Executive Orders 12866 and 13563, above.

We propose to require covered entities and business associates to maintain the information necessary to generate accountings of disclosures and access reports for three years. With respect to accountings of disclosures, this is a shortening of the retention period and therefore should reduce their information collection burden. With respect to access reports, covered entities and business associates should already be collecting and retaining this information in accordance with their obligations under the Security Rule and their business associate agreements, and furthermore should be collecting and maintaining access logs as part of their usual and customary business.

2. Estimated Annualized Burden Hours

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
164.520	Revision of Notice of Privacy Practices for Protected Health Information.	673,324	1	30/60	336,662
Total					336,662

List of Subjects in 45 CFR Part 164

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements, Security.

For the reasons set forth in the preamble, the Department proposes to amend 45 CFR Subtitle A, Subchapter C, part 164, as set forth below:

PART 164—SECURITY AND PRIVACY

1. The authority citation for part 164 is revised to read as follows:

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 1320d–1320d–9; sec. 264, Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320–2(note)); and secs. 13400—13424, Pub. L. 111–5, 123 Stat. 258–279.

2. Amend § 164.520 to revise paragraph (b)(1)(iv)(E) as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(b) * * *

(iv) * * *

(E) The right to receive an accounting of disclosures of protected health information and an access report as provided by § 164.528; and

* * * * *

3. Revise § 164.528 to read as follows:

§ 164.528 Accounting of disclosures of protected health information and access report.

(a)(1) *Standard: Right to an accounting of disclosures of protected health information.* (i) Except as provided in paragraph (a)(1)(ii) of this section, an individual has the right to a written accounting of the following disclosures of protected health information about the individual in a designated record set by a covered entity or business associate made in the three years prior to the date on which the accounting is requested:

(A) Disclosures not permitted by this subpart, unless the individual has received notification of the impermissible disclosure pursuant to § 164.404;

(B) For public health activities as provided in § 164.512(b), except disclosures to report child abuse or neglect pursuant to § 164.512(b)(1)(ii);

(C) For judicial and administrative proceedings as provided in § 164.512(e);

(D) For law enforcement purposes as provided in § 164.512(f);

(E) To avert a serious threat to health or safety as provided in § 164.512(j);

(F) For military and veterans activities, the Department of State's medical suitability determinations, and government programs providing public benefits as provided in § 164.512(k)(1), (4), and (6); and

(G) For workers' compensation as provided in § 164.512(l).

(ii) A covered entity need not account for a disclosure under paragraph (a)(1)(i) of this section if it also is required by law, unless such disclosure falls under paragraphs (a)(1)(i)(C) or (D).

(2) *Implementation specification: Content of the accounting.* (i) The accounting must include for each disclosure:

(A)(*1*) The date, if known; or if not, the approximate date or period of time during which the disclosure occurred which, at a minimum, shall include the month and year or a description of when the disclosure occurred from which an individual can readily determine the month and year of the disclosure; or

(*2*) For multiple disclosures to the same recipient for a single purpose, the dates, as described in paragraph (a)(2)(i)(A)(*1*) of this section, of the first disclosure and the last disclosure in the accounting period.

(B) The name of the entity or natural person who received the protected health information and, if known, the address of such entity or person, except when such information constitutes protected health information about another individual, in which case a description such as "another patient," "another enrollee," or similar language must be included;

(C) A brief description of the type of protected health information disclosed; and

(D) A brief description of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such description, a copy of a written request for a disclosure under § 164.512, if any.

(ii) The covered entity shall provide the individual with the option to limit the accounting of disclosures to a specific time period, type of disclosure, or recipient.

(3) *Implementation specification: Provision of the accounting.* (i) The covered entity must act on the individual's request for an accounting no later than 30 days after receipt of such a request, as follows.

(A) The covered entity must provide the individual with the accounting requested; or

(B) If the covered entity is unable to provide the accounting within the time required by paragraph (a)(3)(i) of this section, the covered entity may extend the time to provide the accounting by no more than 30 days, provided that:

(*1*) The covered entity, within the time limit set by paragraph (a)(3)(i) of this section, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will provide the accounting; and

(*2*) The covered entity may have only one such extension of time for action on a request for an accounting.

(ii) The covered entity must provide the accounting in the form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by the covered entity and the individual.

(iii)(A) The covered entity must provide the first accounting to an individual in any 12-month period without charge and inform the individual at the time of the request that there may be a fee for each subsequent request for an accounting by the individual within the 12-month period.

(B) The covered entity may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12-month period, provided that the covered entity informs the individual of the fee at the time of the subsequent request and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

(iv) The covered entity may require individuals to make requests for an accounting in writing provided that it informs individuals of such a requirement.

(4) *Implementation specification: Law enforcement delay.* (i) If a law enforcement official states to a covered entity that providing an accounting to an individual of disclosures to the law enforcement official would be reasonably likely to impede the law enforcement agency's activities, the covered entity shall:

(A) If the statement is in writing and specifies the time for which a delay is required, delay providing the individual with an accounting of disclosures for such purposes for the time period specified; or

(B) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay providing the individual with an accounting of disclosures for such purposes temporarily and no longer than 30 days from the date of the oral statement unless a written statement as described in paragraph (a)(4)(i)(A) of this section is received during that time.

(ii) The covered entity shall account for all other disclosures in accordance with paragraph (a) of this section and shall supplement the accounting with information about the disclosures to law enforcement upon expiration of the requested law enforcement delay.

(5) *Implementation specification: Documentation.* (i) Notwithstanding § 164.530(j)(2), for each disclosure that is subject to the accounting requirements of this section, a covered entity or business associate must retain the information required to be included in an accounting under this section for three years from the date of the disclosure.

(ii) A covered entity must document the following and retain the documentation as required by § 164.530(j):

(A) A copy of the written accounting that is provided to the individual under this section; and

(B) The titles of the persons or offices responsible for receiving and processing requests for an accounting by individuals.

(b)(1) *Standard: Right to an access report.* An individual has a right to receive a written access report that indicates who has accessed protected health information about the individual in an electronic designated record set maintained by a covered entity or business associate for up to three years prior to the date on which the access report is requested.

(2) *Implementation specification: Content of the access report.* (i) The covered entity must provide the individual with an access report that includes the following:

(A) Date of access;

(B) Time of access;

(C) Name of natural person, if available, otherwise name of entity accessing the electronic designated record set;

(D) Description of what information was accessed, if available; and

(E) Description of action by the user, if available, e.g., "create," "modify," "access," or "delete."

(ii) The covered entity shall provide the individual with the option to limit the access report to a specific date, time period, or person. The covered entity may provide the individual with the option to limit the access report to a specific organization, such as the covered entity or a specific business associate.

(iii) The covered entity must provide the access report in a format that is understandable to the individual.

(3) *Implementation specification: Provision of the access report.*

(i) The covered entity must act on the individual's request for an access report no later than 30 days after receipt of such a request, as follows.

(A) The covered entity must provide the individual with the access report requested; or

(B) If the covered entity is unable to provide the access report within the time required by paragraph (b)(3)(i) of this section, the covered entity may extend the time to provide the accounting by no more than 30 days, provided that:

(*1*) The covered entity, within the time limit set by paragraph (b)(3)(i) of this section, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will provide the access report; and

(*2*) The covered entity may have only one such extension of time for action on a request for an access report.

(ii) The covered entity must provide the individual with the access report in a machine readable or other electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual. If the individual requests the access report in hard copy form, the covered entity must provide the individual with the access report in a readable hard copy form. For purposes of this paragraph, machine readable data is digital information stored in a standard format enabling the information to be processed and analyzed by computer.

(iii)(A) The covered entity must provide the first access report to an individual in any 12-month period without charge and inform the individual at the time of the request that there may be a fee for each subsequent request for an access report by the individual within the 12-month period.

(B) The covered entity may impose a reasonable, cost-based fee for each subsequent request for an access report by the same individual within the 12-month period, provided that the covered entity informs the individual of the fee at the time of the subsequent request and provides the individual with an opportunity to withdraw or modify the request for a subsequent access report in order to avoid or reduce the fee.

(iv) The covered entity may require individuals to make requests for an access report in writing provided that it informs individuals of such a requirement.

(4) *Implementation specification: Documentation.* (i) Notwithstanding § 164.530(j)(2), for each use or disclosure that is subject to the access report requirements of this section, a covered entity or business associate must retain the information required to be included in an access report under this section for three years from the date of the use or disclosure.

(ii) A covered entity must document the following and retain the documentation as required by § 164.530(j):

(A) A copy of the access report that is provided to the individual under this section; and

(B) The titles of the persons or offices responsible for receiving and processing requests for an access report by individuals.

(c) *Confidentiality of patient safety work product.* A covered entity shall exclude from an accounting or access report under this section any information that meets the definition of *patient safety work product* at 42 CFR 3.20.

Dated: February 7, 2011.

Kathleen Sebelius,

Secretary.

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H.R. 1308/P.L. 112–13
To amend the Ronald Reagan Centennial Commission Act to extend the termination date for the Commission, and for other purposes. (May 12, 2011; 125 Stat. 215)
Last List April 28, 2011

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