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WHEN: Tuesday, June 14, 2011
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Presidential Documents

Title 3—

The President

Proclamation 8684 of May 31, 2011

African-American Music Appreciation Month, 2011

By the President of the United States of America

A Proclamation

The music of our Nation has always spoken to the condition of our people and reflected the diversity of our Union. African-American musicians, composers, singers, and songwriters have made enormous contributions to our culture by capturing the hardships and aspirations of a community and reminding us of our shared values. During African-American Music Appreciation Month, we honor the rich musical traditions of African-American musicians and their gifts to our country and our world.

From the cadenced hums of spirituals to the melodies of rhythm and blues, African-American music has been used to communicate, to challenge, to praise, and to uplift in times of both despair and triumph. The rhythmic chords embedded in spirituals have long expressed a deep faith in the power of prayer, and brought hope to slaves toiling in fields. The soulfulness of jazz and storytelling in the blues inspired a cultural renaissance, while the potent words of gospel gave strength to a generation that rose above the din of hatred to move our country toward justice and equality for all.

Today, African-American musicians continue to create new musical genres and transform the scope of traditional musical formats. The artistic depth of soul, rock and roll, and hip-hop not only bring together people across our Nation, but also energize and shape the creativity of artists around the world. The contributions of African-American composers and musicians to symphony, opera, choral music, and musical theater continue to reach new audiences and encourage listeners to celebrate fresh interpretations of these and other genres. In cherished songs passed down through generations and innovative musical fusions crafted today, African-American music continues to transcend time, place, and circumstance to provide a source of pride and inspiration for all who hear its harmonies. This month, we celebrate the legacy of African-American music and its enduring power to bring life to the narrative of our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2011 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and foster appreciation of music which is composed, arranged, or performed by African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–14170
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Presidential Documents

Proclamation 8685 of May 31, 2011

Lesbian, Gay, Bisexual, And Transgender Pride Month, 2011

By the President of the United States of America

A Proclamation

The story of America's Lesbian, Gay, Bisexual, and Transgender (LGBT) community is the story of our fathers and sons, our mothers and daughters, and our friends and neighbors who continue the task of making our country a more perfect Union. It is a story about the struggle to realize the great American promise that all people can live with dignity and fairness under the law. Each June, we commemorate the courageous individuals who have fought to achieve this promise for LGBT Americans, and we rededicate ourselves to the pursuit of equal rights for all, regardless of sexual orientation or gender identity.

Since taking office, my Administration has made significant progress towards achieving equality for LGBT Americans. Last December, I was proud to sign the repeal of the discriminatory "Don't Ask, Don't Tell" policy. With this repeal, gay and lesbian Americans will be able to serve openly in our Armed Forces for the first time in our Nation's history. Our national security will be strengthened and the heroic contributions these Americans make to our military, and have made throughout our history, will be fully recognized.

My Administration has also taken steps to eliminate discrimination against LGBT Americans in Federal housing programs and to give LGBT Americans the right to visit their loved ones in the hospital. We have made clear through executive branch nondiscrimination policies that discrimination on the basis of gender identity in the Federal workplace will not be tolerated. I have continued to nominate and appoint highly qualified, openly LGBT individuals to executive branch and judicial positions. Because we recognize that LGBT rights are human rights, my Administration stands with advocates of equality around the world in leading the fight against pernicious laws targeting LGBT persons and malicious attempts to exclude LGBT organizations from full participation in the international system. We led a global campaign to ensure "sexual orientation" was included in the United Nations resolution on extrajudicial execution—the only United Nations resolution that specifically mentions LGBT people—to send the unequivocal message that no matter where it occurs, state-sanctioned killing of gays and lesbians is indefensible. No one should be harmed because of who they are or who they love, and my Administration has mobilized unprecedented public commitments from countries around the world to join in the fight against hate and homophobia.

At home, we are working to address and eliminate violence against LGBT individuals through our enforcement and implementation of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. We are also working to reduce the threat of bullying against young people, including LGBT youth. My Administration is actively engaged with educators and community leaders across America to reduce violence and discrimination in schools. To help dispel the myth that bullying is a harmless or inevitable part of growing up, the First Lady and I hosted the first White House Conference on Bullying Prevention in March. Many senior Administration officials have also joined

me in reaching out to LGBT youth who have been bullied by recording "It Gets Better" video messages to assure them they are not alone.

This month also marks the 30th anniversary of the emergence of the HIV/AIDS epidemic, which has had a profound impact on the LGBT community. Though we have made strides in combating this devastating disease, more work remains to be done, and I am committed to expanding access to HIV/AIDS prevention and care. Last year, I announced the first comprehensive National HIV/AIDS Strategy for the United States. This strategy focuses on combinations of evidence-based approaches to decrease new HIV infections in high risk communities, improve care for people living with HIV/AIDS, and reduce health disparities. My Administration also increased domestic HIV/AIDS funding to support the Ryan White HIV/AIDS Program and HIV prevention, and to invest in HIV/AIDS-related research. However, government cannot take on this disease alone. This landmark anniversary is an opportunity for the LGBT community and allies to recommit to raising awareness about HIV/AIDS and continuing the fight against this deadly pandemic.

Every generation of Americans has brought our Nation closer to fulfilling its promise of equality. While progress has taken time, our achievements in advancing the rights of LGBT Americans remind us that history is on our side, and that the American people will never stop striving toward liberty and justice for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2011 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of the United States to eliminate prejudice everywhere it exists, and to celebrate the great diversity of the American people.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–14174
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Presidential Documents

Proclamation 8686 of May 31, 2011

National Caribbean-American Heritage Month, 2011

By the President of the United States of America

A Proclamation

The fabric of our Nation has been woven together and enriched by the diversity of our people. Our legacy as a Nation of immigrants is part of what makes America strong, and during National Caribbean-American Heritage Month, we celebrate the rich history and vibrant culture Caribbean Americans have brought to our shores.

Immigrants from Caribbean countries have come to America for centuries. Some came through the bondage of slavery. Others willfully left behind the world they knew in search of a better life. Regardless of the circumstances of their arrival, they had faith their descendants would have a chance to realize their greatest potential.

Caribbean Americans have prospered in every sector of our society and enhanced our national character while maintaining the multiethnic and multicultural traditions of their homelands. They are doctors and lawyers, public servants and scientists, and athletes and service members. Their successes inspire individuals in the United States and abroad, and we take pride in the contributions Caribbean Americans continue to make to the narrative of our Nation's progress. Their achievements are borne of hard work and ambition, and my Administration is committed to creating pathways to prosperity that ensure future generations of Caribbean Americans, along with all Americans, are able to pursue and realize the American dream.

This month, we also recognize the important friendship between the United States and the countries of the Caribbean as we expand our partnership to promote economic development, democratic governance, citizen security, and improved health and education in the region. Additionally, as Haiti continues to recover from last year's devastating earthquake, we remain committed to standing beside the people of Haiti as they rebuild their proud nation, and to working with others in the region to bring lasting prosperity and stability to the country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2011 as National Caribbean-American Heritage Month. I urge all Americans to commemorate this time when we celebrate the history and culture of Caribbean Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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Presidential Documents

Proclamation 8687 of May 31, 2011

Great Outdoors Month, 2011

By the President of the United States of America

A Proclamation

For generations, America's great outdoors have ignited our imaginations, bolstered our economy, and fueled our national spirit of adventure and independence. The United States holds a stunning array of natural beauty—from sweeping rangelands and tranquil beaches, to forests stretching over rolling hills and rivers raging through stone-faced cliffs. During Great Outdoors Month, we rededicate ourselves to experiencing and protecting these unique landscapes and treasured sites.

As America's frontier diminished and our cities expanded, a few bold leaders and individuals had the foresight to protect our most precious natural and historic places. Today, we all share the responsibility to uphold their legacy of conservation, whether by protecting an iconic vast public land, or by creating a community garden or an urban park. Last year, I was proud to launch the America's Great Outdoors Initiative, a project that empowers Americans to help build a new approach to conservation and outdoor recreation. My Administration hosted dozens of regional listening sessions to collect ideas from people from across our country with a stake in the health of our environment and natural places. Our conversations with businesspeople, ranchers, hunters, fishermen, tribal leaders, students, and community groups led to a report unveiled in February, *America's Great Outdoors: A Promise to Future Generations*, which lays the foundation for smarter, more community-driven action to protect our invaluable natural heritage.

Our plan will restore and increase recreational access to public lands and waterways; bolster rural landscapes, including working farms and ranches; develop the next generation of urban parks and community green spaces; and create a new Conservation Service Corps so that young people can experience and restore the great outdoors. To implement these recommendations, my Administration is dedicated to building strong working relationships with State, local, and tribal governments, as well as community, private, and non-profit partners across America. The First Lady's "*Let's Move!*" initiative encourages youth to enjoy what our outdoors have to offer. These programs and partnerships will improve our quality of life and our health, rejuvenate local and regional economies, spur job creation, protect wildlife and historic places, and ensure our natural legacy endures for generations to come. All Americans can read the report and learn more at www.AmericasGreatOutdoors.gov.

As we commit to protecting our country's outdoor spaces, we also celebrate all they have to offer. Our public lands and other open areas provide myriad opportunities for families and friends to explore, play, and grow together—from hiking and wildlife watching to canoeing, hunting, and fishing, and playing in a neighborhood park. These activities can help our kids stay healthy, active, and energized, while reconnecting with their natural heritage. This month, let each of us resolve to protect our great outdoors; discover their wonders; and share them with our friends, our neighbors, and our children.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2011 as Great Outdoors Month. I urge all Americans to explore the great outdoors and to uphold our Nation's legacy of conserving our lands for future generations.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–14185
Filed 6–6–11; 8:45 am]
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Rules and Regulations

Federal Register
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Tuesday, June 7, 2011

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AM25

General Schedule Locality Pay Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On behalf of the President's Pay Agent, the U.S. Office of Personnel Management is issuing final regulations on the locality pay program for General Schedule employees. The regulations, which became applicable as an interim rule on January 2, 2011, established separate locality pay areas for the States of Alaska and Hawaii and extended coverage of the Rest of U.S. locality pay area to include American Samoa, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the U.S. Virgin Islands, and all other U.S. possessions listed in 5 CFR 591.205, applicable on the first day of the first pay period that began on or after January 1, 2011.

DATES: *Effective on* July 7, 2011 we are adopting as a final rule, with minor changes, the interim rule published at 75 FR 60285 on September 30, 2010.

Applicability Date: The regulations were applicable on the first day of the first pay period beginning on or after January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; e-mail: *pay-leave-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. The Non-Foreign Area Retirement Equity Assurance Act of 2009 (NAREAA), Public Law 111–84, title XIX, subtitle B (October 28, 2009), extended locality pay to the States of Alaska and Hawaii and the U.S. territories and possessions effective in January 2010. While the statute included a sense of the Congress statement that one locality pay area cover the entire State of Alaska and one cover the entire State of Hawaii, it did not actually establish any new locality pay areas.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council (Council), a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the locality pay program.

In its interim rule, the Pay Agent concluded that separate locality pay areas should be established for the States of Alaska and Hawaii because we have non-Federal salary survey data collected by the Bureau of Labor Statistic (BLS) in its National Compensation Survey (NCS) program showing pay disparities between General Schedule (GS) and non-Federal pay well above that for the Rest of U.S. (RUS) locality pay area. Such action also coincides with the sense of the Congress statement in the NAREAA that these locations each be covered by a single separate locality pay area. The Pay Agent also concluded that the other non-foreign areas, which are not covered by the NCS program, should be treated like other locations in the United States where pay levels are lower than in the RUS area, or that cannot be surveyed separately and included them in the RUS area.

Development of New Survey Methodology

In response to earlier requests of the Federal Salary Council, BLS has developed a method for using data from its much larger Occupational Employment Statistics (OES) program in conjunction with National Compensation Survey (NCS) data. The method assesses the impact of level of work on pay using NCS data so that OES data can be used to compare GS and non-Federal pay for the same levels of work in a geographic area as required by the locality pay statute. The President's Fiscal Year 2011 budget included a proposal to use this new alternative approach for locality pay in order to free up BLS resources for use in other programs while extending the estimation of pay gaps to areas that are not present in the NCS sample. The Federal Salary Council and the Pay Agent plan to use the new OES model in the future.

While BLS does not cover Guam, Puerto Rico, or the U.S. Virgin Islands under the NCS program, BLS does have a robust sample for these locations and for Anchorage and Honolulu under OES. The Federal Salary Council evaluated comparisons of GS and non-Federal pay for these locations before it submitted its views on the interim rule. Here are the results:

COMPARISON OF GS AND NON-FEDERAL PAY USING OES DATA—MARCH 2010

Location	Non-Federal pay/GS pay disparity (percent)	Location minus RUS disparity (percent)
Anchorage	53.99	25.85
Honolulu	39.19	11.05
Guam	−0.46	−28.60

COMPARISON OF GS AND NON-FEDERAL PAY USING OES DATA—MARCH 2010—Continued

Location	Non-Federal pay/GS pay disparity (percent)	Location minus RUS disparity (percent)
Puerto Rico	−15.31	−43.45
U.S. Virgin Islands	15.24	−12.90
Rest of U.S.	28.14	NA

The results indicate that non-Federal pay levels in Anchorage and Honolulu are well above those in the RUS area while non-Federal pay levels in Guam, Puerto Rico, and the U.S. Virgin Islands are well below those in the RUS area.

Federal Salary Council Comments

The Federal Salary Council met during the comment period on the interim regulations and submitted the following comments supporting the Pay Agent's interim rule:

"The Non-Foreign Area Retirement Equity Assurance Act of 2009 (the Act) extended locality pay to the "non-foreign" areas. The Pay Agent issued an interim regulation on September 30, 2010, making Alaska and Hawaii separate whole-State locality pay areas and adding American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, the U.S. Virgin Islands, and U.S. territories and possessions to the Rest of U.S. locality pay area. The Pay Agent concluded Alaska and Hawaii should be separate areas based on NCS salary surveys in Anchorage and Honolulu that show higher non-Federal pay levels than in the RUS area and a sense of Congress contained in the Act that Alaska and Hawaii should be separate whole-State areas. BLS does not conduct surveys under NCS in any of the other "non-foreign" areas. The Council concurs with the Pay Agent's action to make Alaska and Hawaii separate whole-State locality pay areas and include the other areas in the RUS locality pay area.

BLS does include Guam, Puerto Rico, and the U.S. Virgin Islands under the OES program and applied its OES model to these locations. The results are included in Attachment 2. Based on the OES model, non-Federal pay levels in these locations are below those in the RUS area. However, since RUS is an average, it is likely about half of RUS is also below the average. Our policy in the past has been that the RUS locality rate should be the floor; no location should receive less than the RUS rate. We believe this is a good policy and should continue and apply to Guam, Puerto Rico, and the U.S. Virgin Islands.

The Council's recommendations are posted at *http://www.opm.gov/oca/fsc/recommendation10.pdf*.

Comments Received

OPM received 49 comments on the interim rule, including comments from an attorney representing employees in *Caraballo* v. *U.S.*, Members of Congress representing American Samoa and Guam, and the Guam Federal Executive Association. Comments included:

- Some supported separate whole-State pay areas for Alaska and Hawaii as provided in the regulations.
- Some believe a higher rate should be approved for remote areas in Alaska. (OPM notes, however, that locality pay must be based on pay comparisons, not remoteness.)
- Some believe the statutory cap on locality pay is unfair. (OPM notes, however, that the caps are imposed by statute.)
- Some believe employees in the Northern Mariana Islands and Guam should receive a higher rate than Alaska and Hawaii due to remoteness and isolation. (OPM notes, however, that locality pay must be based on pay comparisons, not remoteness.)
- Some believe Hawaii should receive Washington-Baltimore locality pay. (OPM notes, however, that locality pay salary survey results show that is not warranted by local labor market rates.)

Many of the comments expressed the view that Pacific locations should receive either the Hawaii or Washington-Baltimore locality pay rate due to the effect of remoteness and isolation from the mainland. We respond in detail below to comments submitted by the attorney, since they expressed similar views and were the most detailed.

Comment 1

"It is my view that including transoceanic non-foreign areas in the Rest of U.S. locality pay area is contrary to the fundamental premise of the *Caraballo* settlement."

and

"The foundation of the *Caraballo* settlement is the recognition and agreement by the parties that rate-based cost comparisons are insufficient to provide a true picture of the economies of the non-foreign areas, which are remote and isolated from the rest of the country in many ways. This is just as true for salary costs as for living costs."

OPM Response

We conclude the fundamental premise of *Caraballo* is equivalent to its foundation. The *Caraballo* settlement is confined to the former cost-of-living allowance (COLA) program and doesn't apply to the GS locality pay program. The locality pay statute requires locality pay based on comparisons of GS and non-Federal pay for the same levels of work, 5 U.S.C. 5304, not on the *Caraballo* settlement, living costs, or a view of the "true picture of the economies."

Comment 2

"Without an adjustment to account for various conditions which are unique to such areas (including those described below), the living standards afforded by the locality pay rate will be lower than Congress intended."

OPM Response

We find that Congress did not prescribe a policy to address any particular living standard, did not authorize consideration of living costs in setting locality pay, and did not cite living standards in the locality pay statute. See 5 U.S.C. 5304. The locality pay statute authorizes locality pay to make General Schedule rates of pay "substantially equal (when considered in the aggregate) to the rates paid to non-Federal workers for the same levels of work in the same locality." 5 U.S.C. 5304. Adding separate adjustments above local labor market rates to account for various conditions which are unique to such areas isn't contemplated in the locality pay statute and would cause GS rates of pay to be higher than market rates, not "substantially equal when considered in the aggregate." See 5 U.S.C. 5304.

Comment 3

"If, for administrative reasons, a non-foreign area is to be included in the locality pay area established for a broader region, then the two places should have an affinity of some kind."

and

"However, lumping a transoceanic non-foreign area together with Montana and Wyoming makes no sense at all."

and

"The choice made in this rule is the least costly for the Government, and

there does not appear to be any other basis for it."

OPM Response

We believe these locations do have an affinity. Based on available salary survey data, pay levels in these locations are low. Both OPM and the Federal Salary Council evaluated available BLS pay data for Guam, Puerto Rico, and the U.S. Virgin Islands and found the comparison of GS to non-Federal pay in those locations to be below the results for the Rest of U.S. locality pay area. In this way, Guam, Puerto Rico, and the U.S. Virgin Islands were treated exactly like a mainland U.S. location where survey results were below RUS—as the Federal Salary Council has recommended, they were included in the RUS locality pay area. Likewise, other locations that cannot be evaluated separately are also included in the RUS area, whether they are remote on the mainland or remote in the Pacific.

Comment 4

"An alternative choice of a locality pay area for the transoceanic non-foreign areas might be the new locality pay area which covers the Hawaiian Islands."

OPM Response

Pay survey findings indicate non-Federal pay levels in Honolulu are higher than those in Guam and the RUS area and thus warrant a separate locality pay area. Pay survey results in Guam indicate low non-Federal pay levels. There is nothing in the pay statute that requires the Government to pay more than warranted by the local labor market. See 5 U.S.C. 5304.

Comment 5

"However, in light of the COLA program history, the Washington, D.C. area is a better choice than Hawaii as the locality pay area for other transoceanic non-foreign areas at the present time."

and

"The reason for this preference is that the Federal Salary Council has acknowledged the private salary data from both Alaska and Hawaii to be unsatisfactory in certain respects and has urged increased funding for survey enhancements in those areas."

and

"There is a wealth of statistical data comparing living costs between the non-foreign areas and Washington, DC, and this data can be used to correlate locality pay rates in the non-foreign areas (including Hawaii and Alaska) with the rate in Washington, D.C."

OPM Response

The COLA program history is not relevant to the administration of the locality pay program. The COLA statute predates locality pay by 42 years and authorized payments in non-foreign areas made in consideration of living costs substantially higher than in the District of Columbia or conditions of environment which differ substantially from conditions in the continental United States and warrant payments as a recruitment incentive. See 5 U.S.C. 5304 and 5 U.S.C. 5941. Congress chose to phase out COLA and replace it with locality pay. Public Law 111–84, title XIX, subtitle B (October 28, 2009). Locality pay is based solely on pay comparisons for the same levels of work. Living costs and conditions of environment are not mentioned in the locality pay statute. 5 U.S.C. 5304.

The Federal Salary Council did request BLS increase its NCS sample in Honolulu and reinstate its NCS survey in Anchorage. However, as described above, the Federal Salary Council and the Pay Agent are in the process of switching to a new survey methodology using survey data from the OES program. There is nothing wrong with the OES sample in any of the non-foreign areas surveyed, including Guam, Puerto Rico, and the U.S. Virgin Islands. The Council and the Pay Agent reviewed OES data for Guam, Puerto Rico, and the U.S. Virgin Islands, not NCS data.

Comment 6

"Unfortunately, OPM has provided inadequate notice of this rule, and inadequate opportunity for comments and further investigation with respect to this critical issue."

OPM Response

The comments did not explain what was inadequate about the notice or opportunity for comment. Interim final rules are permitted under the regulatory process if necessary to comply with statutory deadlines. OPM accepted and received comments on the interim rule through November 29, 2010, including the attorney's comments. The NAREAA required that locality pay areas for COLA areas be established in time for locality payments in January 2011. Public Law 111–84, title XIX, subtitle B (October 28, 2009). OPM published the rule as an interim rule so that the rule could go into effect before January 2011. This timeline constraint was specifically cited in the interim rule. FR Vol. 75 No. 189, page 60285, September 30, 2010.

Comment 7

The attorney, and other commenters, are concerned that living cost surveys indicate living costs are high in the COLA areas while pay surveys indicate pay levels are not so high. He adds "However, OPM has made no attempt to reconcile the results of the two approaches, much less to explain the diametrically opposite results they yield * * *".

OPM Response

The locality pay statute bases locality pay on comparisons of General Schedule and non-Federal pay for the same levels of work, 5 U.S.C. 5304, not on living costs, at the heart of the *Caraballo* settlement. Living costs are one of many factors affecting pay levels in a location. The extent to which living costs affect or don't affect the supply and price of labor is reflected in area labor costs and salary survey results. Other relevant factors affecting labor costs include the number, types, and skill sets of workers in the area, the size and industry composition of employers, the degree of unionization, and a host of other factors. The locality pay statute does not provide for or require a means for OPM or the Pay Agent to reconcile differences between living costs and salary surveys. See 5 U.S.C. 5304.

Comment 8

The attorney believes that "Part of the explanation for the divergence in results between salary-cost surveys and living-cost surveys undoubtedly lies in the insularity of the transoceanic areas and the strong racial, ethnic, and cultural ties which bind together the residents of those places and inhibit out-migration in search of better paying jobs elsewhere."

OPM Response

The locality pay statute bases locality pay on comparisons of General Schedule (GS) and non-Federal pay for the same levels of work. 5 U.S.C. 5304. It does not base locality pay on out-migration patterns or racial, ethnic, and cultural ties. 5 U.S.C. 5304.

Comment 9

"The locality pay system is not intended to allow the Government to take advantage of depressed conditions in a locality pay area but rather to increase salaries—and thus the performance and retention—of federal workers everywhere in the nation. Yet this rule will have the effect of dragging down the living standards of federal employees in the transoceanic non-foreign areas."

OPM Response

The statute bases locality pay on comparisons of General Schedule (GS) and non-Federal pay for the same levels of work in order to make GS and non-Federal pay substantially equal when considered in the aggregate. 5 U.S.C. 5304. It does not require adjusting survey results to compensate for "depressed conditions" whether such conditions are in the Pacific and attributable to distance from the mainland or ethnic factors, in Detroit and due to conditions in the auto industry, or in areas of the U.S. impacted by natural disasters. 5 U.S.C. 5304. Likewise, the locality pay statute does not guarantee any particular living standard. 5 U.S.C. 5304.

Comment 10

The attorney believes "* * * this rule is not only arbitrary, capricious, and an abuse of discretion under the Administrative Procedure Act, but it is also unlawfully discriminatory against racial and ethnic minorities which have disproportionately large presences * * * in the transoceanic areas * * *" Other commenters made similar comments.

OPM Response

Based on available data, non-Federal pay levels in these locations are low. Both OPM and the Federal Salary Council evaluated available BLS pay data for Guam, Puerto Rico, and the U.S. Virgin Islands and found the comparison of GS to non-Federal pay in those locations to be below the results for the Rest of U.S. locality pay area. In this way, Guam, Puerto Rico, and the U.S. Virgin Islands were treated exactly like a mainland location where survey results were below RUS. As the Federal Salary Council has recommended, they were included in the RUS locality pay area. Likewise, other locations that cannot be evaluated separately are also included in the RUS area, whether they are remote on the mainland or remote in the Pacific.

Impact and Implementation

This rule affects rates of pay for about 44,100 civilian white-collar employees in the States of Alaska and Hawaii, American Samoa, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and other U.S. possessions. Under the rule, approved GS locality pay rates are higher than in the RUS locality pay area for employees in Alaska and Hawaii. Federal civilian white-collar employees in the U.S. territories and possessions are covered by the RUS GS locality pay rate.

Clarification and Updates

During the comment period, we noted that the definition of "Continental United States" in section 531.602 and reference to continental U.S. in the definition of employee are no longer needed, so we are removing this out-of-date language. We are also taking this publication opportunity to update the locality pay caps in section 531.606 to be consistent with current law.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is adopting as a final rule, with minor changes, the interim rule published at 75 FR 60285 on September 30, 2010 and is amending 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.602, remove the definition of *Continental United States* and revise paragraph (1) in the definition of *employee.* The revision reads as follows:

§ 531.602 Definitions.

* * * * *

Employee * * *

(1) An employee in a position to which 5 U.S.C. chapter 53, subchapter III, applies, including a GM employee, and whose official worksite is located in a locality pay area; and

* * * * *

■ 3. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Atlanta-Sandy Springs-Gainesville, GA-AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA-AL CSA;

(3) Boston-Worcester-Manchester, MA-NH-RI-ME—consisting of the Boston-Worcester-Manchester, MA-RI-NH CSA, plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(4) Buffalo-Niagara-Cattaraugus, NY—consisting of the Buffalo-Niagara-Cattaraugus, NY CSA;

(5) Chicago-Naperville-Michigan City, IL-IN-WI—consisting of the Chicago-Naperville-Michigan City, IL-IN-WI CSA;

(6) Cincinnati-Middletown-Wilmington, OH-KY-IN—consisting of the Cincinnati-Middletown-Wilmington, OH-KY-IN CSA;

(7) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

(8) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(9) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(10) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(11) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA;

(12) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(13) Hartford-West Hartford-Willimantic, CT-MA—consisting of the Hartford-West Hartford-Willimantic, CT CSA, plus the Springfield, MA MSA and New London County, CT;

(14) Hawaii—consisting of the State of Hawaii;

(15) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

(16) Huntsville-Decatur, AL—consisting of the Huntsville-Decatur, AL CSA;

(17) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(18) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria-Goleta, CA MSA and all of Edwards Air Force Base, CA;

(19) Miami-Fort Lauderdale-Pompano Beach, FL—consisting of the Miami-Fort Lauderdale-Pompano Beach, FL MSA, plus Monroe County, FL;

(20) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(21) Minneapolis-St. Paul-St. Cloud, MN-WI—consisting of the Minneapolis-St. Paul-St. Cloud, MN-WI CSA;

(22) New York-Newark-Bridgeport, NY-NJ-CT-PA—consisting of the New York-Newark-Bridgeport, NY-NJ-CT-PA CSA, plus Monroe County, PA, Warren County, NJ, and all of Joint Base McGuire-Dix-Lakehurst;

(23) Philadelphia-Camden-Vineland, PA-NJ-DE-MD—consisting of the Philadelphia-Camden-Vineland, PA-NJ-DE-MD CSA excluding Joint Base McGuire-Dix-Lakehurst, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(24) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(25) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(26) Portland-Vancouver-Hillsboro, OR-WA—consisting of the Portland-Vancouver-Hillsboro, OR-WA MSA, plus Marion County, OR, and Polk County, OR;

(27) Raleigh-Durham-Cary, NC—consisting of the Raleigh-Durham-Cary, NC CSA, plus the Fayetteville, NC MSA, the Goldsboro, NC MSA, and the Federal Correctional Complex Butner, NC;

(28) Richmond, VA—consisting of the Richmond, VA MSA;

(29) Sacramento—Arden-Arcade—Yuba City, CA-NV—consisting of the Sacramento—Arden-Arcade—Yuba City, CA-NV CSA, plus Carson City, NV;

(30) San Diego-Carlsbad-San Marcos, CA—consisting of the San Diego-Carlsbad-San Marcos, CA MSA;

(31) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(32) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA, plus Whatcom County, WA;

(33) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA—consisting of the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV CSA, plus the Hagerstown-Martinsburg, MD-WV MSA, the York-Hanover-Gettysburg, PA CSA, and King George County, VA; and

(34) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

■ 4. In § 531.606—

■ a. Revise paragraph (b)(1);

■ b. Redesignate paragraph (b)(2) and (b)(3) as (b)(3) and (b)(4), respectively;

■ c. Add a new paragraph (b)(2); and

■ d. Revise newly designated paragraph (b)(4).

The revisions and addition read as follows:

531.606 Maximum limits on locality rates.

(a) * * *

(b)(1) A locality rate for an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A) and 5304(h)(1)(B) may not exceed the rate for level III of the Executive Schedule.

(2) A locality rate for an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(C) may not exceed—

(i) The rate for level III of the Executive Schedule, when the positions are not covered by an appraisal system certified under 5 U.S.C. 5307(d); or

(ii) The rate for level II of the Executive Schedule, when the positions are covered by an appraisal system certified under 5 U.S.C. 5307(d).

* * * * *

(4) If initial application of paragraph (b)(3) of this section otherwise would reduce an employee's existing locality rate, the employee's locality rate is capped at the higher of—

(i) The amount of the employee's locality rate on the day before paragraph (b)(3) of this section was initially applied; or

(ii) The rate for level IV of the Executive Schedule.

* * * * *

[FR Doc. 2011–13993 Filed 6–6–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 320

[Docket No. FDA–2010–D–0482]

Guidance for Industry and Investigators on Enforcement of Safety Reporting Requirements for Investigational New Drug Applications and Bioavailability/Bioequivalence Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry and investigators entitled "Enforcement of Safety Reporting Requirements for INDs and BA/BE Studies." This guidance is intended to inform sponsors and investigators of FDA's intent to exercise enforcement discretion regarding the reporting requirements in the final rule, "Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans" (75 FR 59935, September 29, 2010), until September 28, 2011. This action is being taken in response to requests from sponsors to extend the March 28, 2011, effective date of the final rule. FDA expects all sponsors and investigators to be in compliance with the new regulations no later than September 28, 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–

305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephanie Shapley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6323, Silver Spring, MD 20993–0002, 301–796–4836; or Laura Rich, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and investigators entitled "Enforcement of Safety Reporting Requirements for INDs and BA/BE Studies." This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation (§ 10.115 (21 CFR 10.115)). The guidance provides that the Agency intends to grant a 6-month period of enforcement discretion relating to the new reporting requirements (described in this document) that became effective on March 28, 2011. Accordingly, this guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). The Agency made this determination because the guidance deals with a short-term and highly time-sensitive issue. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's GGPs regulation.

On September 29, 2010, FDA published a final rule "Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans" (75 FR 59935) and issued related draft guidance "Safety Reporting Requirements for INDs and BA/BE Studies" (75 FR 60129, Docket No. FDA–2010–D–0482). The final rule amended the investigational new drug safety reporting requirements under part 312 (21 CFR part 312) and added safety reporting requirements for persons conducting bioavailability and bioequivalence studies under part 320 (21 CFR part 320). The effective date for the final rule was March 28, 2011. In comments to the docket, and in other communications to the Agency placed in the docket, stakeholders have requested an extension to the effective date of the final rule because of the need for significant internal process changes in order to meet the new requirements. Specifically, the comments indicated that sponsors needed additional time to implement changes to their internal procedures to comply with the new reporting requirements. The Agency acknowledges these concerns and intends to exercise enforcement discretion regarding the reporting requirements in the final rule until September 28, 2011. During this period of time, FDA does not intend to take enforcement action if sponsors and investigators report in compliance with the reporting requirements under §§ 312.32, 312.64, and 320.31 that were in effect prior to March 28, 2011.

The guidance represents the Agency's current thinking on enforcement of safety reporting requirements for investigational new drug applications and bioavailability/bioequivalence studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/default.htm,* or *http://www.regulations.gov.* Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: June 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13950 Filed 6–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9524]

RIN 1545–BG45

Extension of Withholding to Certain Payments Made by Government Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document describes corrections to final regulations (TD 9524) that were published in the **Federal Register** on Monday, May 9, 2011 (76 FR 26583) relating to withholding by government entities. These regulations reflect changes in the law made by the Tax Increase Prevention and Reconciliation act of 2005 that require Federal, State, and local government entities to withhold income tax when making payments to persons providing property or services. These regulations affect Federal, State, and local government entities that will be required to withhold and report tax from payments to persons providing property or services and also affect the person receiving payments for property or services from the government entities.

DATES: This correction is effective on June 7, 2011, and is applicable on May 9, 2011.

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 3402(t), 3406(g), 6011(a), 6051, 6071(a), and 6302 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9524) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9524) which were the subject of FR Doc. 2011–10760 is corrected as follows:

1. On page 26584, column 1, in the preamble, under the paragraph heading "Summary of Comments and Explanation of Provisions", the second paragraph of the column, line 1, the

language "As discussed in section IX of the" is corrected to read "As discussed in section VIII of the".

2. On page 26854, column 1, in the preamble, under the paragraph heading "Summary of Comments and Explanation of Provisions", the second paragraph of the column, line 13, the language "materially modified (but see section IX" is corrected to read "materially modified (but see section VIII".

3. On page 26586, column 2, in the preamble, under the paragraph heading "D. Advance and Interim Payments", first paragraph, last line, the language "IV.E.1 of this preamble)." is corrected to read "III.E.1 of this preamble).".

4. On page 26587, column 2, in the preamble, the language of the paragraph heading "*IV. Payments Excepted From the Section 3402(t) Withholding Requirements*" is corrected to read "*III. Payments Excepted From the Section 3402(t) Withholding Requirements*".

5. On page 26591, column 1, in the preamble, the language of the paragraph heading "*V. Application of Section 3402(t) to Passthrough Entities*" is corrected to read "*IV. Application of Section 3402(t) to Passthrough Entities*".

6. On page 26591, column 2, in the preamble, the language of the paragraph heading "*VI. Deposits and Reporting of Amounts Withheld Under Section 3402(t)*" is corrected to read "*V. Deposits and Reporting of Amounts Withheld Under Section 3402(t)*".

7. On page 26591, column 3, in the preamble, the language of the paragraph heading "*VII. Crediting of Amounts Withheld*" is corrected to read "*VI. Crediting of Amounts Withheld*".

8. On page 26592, column 2, in the preamble, the language of the paragraph heading "*VIII. Correction of Errors and Liability of Government Entity*" is corrected to read "*VII. Correction of Errors and Liability of Government Entity*".

9. On page 26593, column 2, in the preamble, the language of the paragraph heading "*IX. Extension of Applicability Date and Transition Relief for Existing Contracts*" is corrected to read "*VIII. Extension of Applicability Date and Transition Relief for Existing Contracts*".

10. On page 26594, column 1, in the preamble, the language of the paragraph heading "*X. Transition Rule for Interest and Penalties on Underpayments*" is corrected to read " *IX. Transition Rule for Interest and Penalties on Underpayments*".

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–13932 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS SAN DIEGO (LPD 22) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective June 7, 2011 and is applicable beginning May 18, 2011.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS SAN DIEGO (LPD 22) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27 (a)(i) and (b)(i), pertaining to the placement of all-round task lights in a vertical line; Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k), pertaining to the vertical separation between anchor lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS SAN DIEGO (LPD 22); and

■ B. In Table Four, under paragraph 20, add, in alpha numerical order, by vessel number, and entry for USS SAN DIEGO (LPD 22); and

■ C. In Table Five by adding, in alpha numerical order, by vessel number, and entry for USS SAN DIEGO (LPD 22).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(k) Annex 1	Anchor lights relationship of aft light to forward light in meters 2(k) Annex 1
*	*	*	*	*	*	*		*
USS SAN DIEGO ..	LPD 22	.....	.....	.....	.....	.....	.....	1.88 below.
*	*	*	*	*	*	*		*

* * * * *

TABLE FOUR

Vessel	Number	Angle in degrees of task lights off vertical as viewed from directly ahead or astern
*	*	*
USS SAN DIEGO	LPD 22	10
*	*	*

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS SAN DIEGO	LPD	22	.....	X	71
*	*	*	*	*	*

Approved: May 18, 2011.

M. Robb Hyde

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: May 19, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–12934 Filed 6–6–11; 8:45 am]

BILLING CODE 3810–FF–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 11–668]

Cable Landing Licenses; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a corrected mailing address for the Defense Information Systems Agency in the regulations that we published in the **Federal Register** of January 14, 2002, 67 FR 1615.

DATES: Effective June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Adrienne Downs at (202) 418–0412 or JoAnn Sutton at (202) 418–1372 of the International Bureau, Policy Division.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction superseded § 1.767(j) on the mailing address for the Defense Information Systems Agency and affects applicants requesting streamlined processing of cable landing license applications.

Need for Correction

As published, the final regulation contains an incorrect address for the Defense Information Systems Agency to which applicants seeking to use the streamlined grant procedure specified in paragraph (i) of § 1.767, must send a complete copy of their application, or

any major amendments or other material filings regarding the application to, among others, the Defense Information Systems Agency.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Sarah Van Valzah,

Assistant Bureau Chief, International Bureau.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURES

■ 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 1.767 is amended by revising paragraph (j) to read as follows:

§ 1.767 Cable landing licenses.

* * * * *

(j) *Applications for streamlining.* Each applicant seeking to use the streamlined grant procedure specified in paragraph (i) of this section shall request streamlined processing in its application. Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; and Defense Information Systems Agency, ATTN: GC/DO1, 6910 Cooper Avenue, Fort Meade, MD 20755–7088, and shall certify such service on a service list attached to the application or other filing.

* * * * *

[FR Doc. 2011–14009 Filed 6–6–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 177

[Docket No. PHMSA–2005–22987 (HM–238)]

RIN 2137–AE06

Hazardous Materials: Requirements for Storage of Explosives During Transportation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, PHMSA, in coordination with the Federal Motor Carrier Safety Administration (FMCSA), is approving the use of the National Fire Protection Association Standard (NFPA) 498—*Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives* (2010 Edition) for the construction and maintenance of safe havens used for unattended storage of Division 1.1, 1.2, and 1.3 explosives.

DATES: *Effective Date:* July 7, 2011.

Voluntary Compliance Date: Compliance with the requirements adopted herein is authorized as of June 7, 2011. However, persons voluntarily complying with these regulations should be aware that appeals may be received and as a result of PHMSA's evaluation of these appeals, the amendments adopted in this final rule may be revised accordingly.

Incorporation by reference date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 7, 2011.

FOR FURTHER INFORMATION CONTACT: Ben Supko or Steven Andrews, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Current Federal Requirements Applicable to Explosives Stored During Transportation

A. Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180)

Transportation includes the storage of materials "incident to the[ir] movement." (49 U.S.C. 5102(13)). The HMR require hazardous materials stored incidental to movement to meet all applicable requirements for packaging, hazard communication (including shipping papers and emergency response information), and handling that apply when shipments are actually moving in transportation. The HMR include specific carrier requirements for transportation of hazardous materials by rail, air, vessel, and highway, including requirements for loading and unloading, blocking and bracing, stowage, segregation, and compatibility (49 CFR parts 174, 175, 176, and 177, respectively).

Explosive (Class 1) materials are among the most stringently regulated hazardous materials under the HMR. The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so (49 CFR 173.50(a)). Class 1 materials are assigned to six divisions depending on the degree and nature of the explosive hazard, as shown in the following table (49 CFR 173.50(b)).

Division	Hazard	Description of hazard	Examples
1.1	Mass explosion hazard	Instantaneous explosion of virtually the entire package or shipment.	grenades, mines, and nitroglycerin.
1.2	Projection hazard without a mass explosion hazard.	Fragments projected outward at some distance.	rockets and warheads.
1.3	Fire hazard and either a minor projection hazard or minor blast hazard or both but not a mass explosion hazard.	Fire and possible projection of fragments outward at some distance.	projectiles, signal smoke, and tracers for ammunition.
1.4	Minor explosion hazard	Explosion largely confined to the package and no projection of fragments of any appreciable size or range is expected.	ammunition, airbags, and model rocket motors.
1.5	Very insensitive explosive	Mass explosion hazard, but low probability of initiation or detonation while in transportation.	blasting agents and ammonia-nitrate fuel oil mixture.

Division	Hazard	Description of hazard	Examples
1.6	Extremely insensitive article	Negligible probability of accidental initiation or propagation.	insensitive article and military.

The HMR prohibit transportation of an explosive unless it has been examined, classed, and approved by PHMSA's Associate Administrator for Hazardous Materials Safety (49 CFR 173.51). Separate provisions apply to the transportation of new explosives for examination or developmental testing, explosives approval by a foreign government, small arms cartridges, and fireworks manufactured in accordance with American Pyrotechnics Association Standard 87–1 (49 CFR 173.56). Each approval granted by the Associate Administrator contains packaging and other transportation provisions (e.g., shipping paper requirements, labeling, marking, etc.) that must be followed by a person who offers or transports the explosive material. In addition to the specific requirements in the approval, the HMR require explosives to be marked and labeled and/or placarded to indicate the explosive hazard. Explosives shipments generally must be accompanied by shipping papers and emergency response information. The same requirements apply to the transportation of hazardous materials whether the materials are incidentally stored or actually moving.

In addition, any person who offers for transportation in commerce or transports in commerce a shipment of explosives for which placarding is required under the HMR must (1) register with PHMSA and (2) develop and adhere to a security plan (49 CFR 172.800(b)).[1] A security plan must include an assessment of possible transportation security risks for the covered shipments and appropriate measures to address the identified risks. At a minimum, a security plan must include measures to prevent unauthorized access to shipments and to address personnel and en route security (49 CFR 172.802(a)). The en route security element of the plan must include measures to address the security risks of the shipment while it is moving from its origin to its destination, including shipments stored incidental to movement (49 CFR 172.802(a)(3)). Thus, a facility at which a shipment subject to the security plan requirements is stored during transportation must itself be covered by the security plan. Security plan requirements are performance-based to provide shippers and carriers with the flexibility necessary to develop a plan that addresses a person's individual circumstances and operational environment.

B. Federal Motor Carrier Safety Regulations (FMCSRs; 49 CFR Parts 350–397)

Motor carriers that transport hazardous materials in commerce must also comply with the Federal Motor Carrier Safety Regulations (FMCSRs) addressing driver qualifications; vehicle parts and accessories; driving requirements and hours of service; vehicle inspection, repair and maintenance; driving and parking rules for the transportation of hazardous materials; hazardous materials safety permits; and written route plans. The FMCSRs include requirements for storage of explosives incidental to movement. In accordance with the FMCSRs, a motor vehicle that contains Division 1.1, 1.2, or 1.3 explosives must be attended at all times, including during incidental storage, unless the motor vehicle is located on the motor carrier's property, the shipper or consignee's property, or at a safe haven (49 CFR 397.5).

Under the FMCSRs, a safe haven is an area specifically approved in writing by Federal, state, or local government authorities for the parking of unattended vehicles containing Division 1.1, 1.2, and 1.3 explosive materials (49 CFR 397.5(d)(3)). The decision as to what constitutes a safe haven is generally made by the local authority having jurisdiction over the area. The FMCSRs do not include requirements for safety or security measures for safe havens.

In addition, the FMCSRs require any person who transports more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 material or an amount of a Division 1.5 (explosive) material that requires placarding under Subpart F of Part 172 of the HMR to hold a valid safety permit (49 CFR 385.403(b)). Persons holding a safety permit and transporting Division 1.1, 1.2, and 1.3 materials must prepare a written route plan that meets the requirements of § 397.67(d), which avoids heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys.

Finally, a motor vehicle containing a Division 1.1, 1.2, or 1.3 explosive may not be parked on or within five feet of the traveled portion of a public highway or street; on private property without the consent of the person in charge of the property; or within 300 feet of a bridge, tunnel, dwelling, or place where people work or congregate unless for brief periods when parking in such locations is unavoidable (49 CFR 397.7(a)).

II. Previous Rulemaking Activity in This Matter

A. July 16, 2002 ANPRM (HM–232A)

On July 16, 2002, FMCSA and PHMSA's predecessor agency (the Research and Special Programs Administration) published an advance notice of proposed rulemaking under Docket HM–232A (67 FR 46622) entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." In the ANPRM, we examined the need for enhanced security requirements for motor carrier transportation of hazardous materials. We requested comments on the issue of storage of explosives at safe havens, as well as a variety of security measures generally applicable to a broader range of hazardous materials. FMCSA and RSPA requested comments on a variety of security measures including: escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and notification to State and local authorities. The ANPRM also addressed the issue of explosives storage in safe havens. We received approximately 80 comments in response to the ANPRM.

On March 19, 2003, FMCSA published a further notice (68 FR 13250) that RSPA had assumed the lead role for this rulemaking proceeding. Due to the complexity of the issues raised in Docket HM–232A and the number of comments received on the ANPRM, RSPA decided to consider the storage of explosives in a separate rulemaking. RSPA indicated its intentions in the October 30, 2003 final rule published under Docket HM–223 (68 FR 61906) entitled "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." In the final rule, which became effective on June 1,

[1] When transported by highway, placards must be affixed to the transport vehicle or freight container when (1) any quantity of Division 1.1, 1.2, or 1.3 explosive materials are present, and (2) more than 1,000 pounds of Division 1.4, 1.5 or 1.6 materials are present. 49 CFR 172.504.

2005 (see 69 FR 70902; December 8, 2004), RSPA clarified the applicability of the HMR to specific functions and activities related to the transportation of hazardous materials in commerce. In the preamble to the HM–223 final rule, RSPA identified issues related to the storage of hazardous materials during transportation that need to be addressed (68 FR 61906; 61931). RSPA noted that the current HMR requirements applicable to the storage of explosives during transportation need to be reevaluated to ensure that they adequately account for potential safety and security risks. For example, the agency has concerns regarding the lack of Federal standards for safe havens and inconsistent State requirements.

Consistent with and supportive of the respective transportation security roles and responsibilities of the DOT and DHS as delineated in a Memorandum of Understanding (MOU) signed September 28, 2004, and of Transportation Security Administration (TSA) and PHMSA as outlined in an Annex to that MOU signed August 7, 2006 PHMSA published a withdrawal of HM–232A on June 27, 2007 (72 FR 35211). In the withdrawal we advised the public that the TSA assumed the lead role from PHMSA for rulemaking addressing the security of motor carrier shipments of hazardous materials under Docket HM–232A. Accordingly, PHMSA withdrew the ANPRM issued and closed its rulemaking proceeding. PHMSA also indicated it would continue to consider alternatives for enhancing the safety of explosives stored during transportation.

B. November 16, 2005 ANPRM (HM–238)

Some of the comments submitted in response to the July 16, 2002 ANPRM contained recommendations that the current requirements applicable to the storage of explosives during transportation should be reevaluated to ensure that they adequately account for potential safety and security risks. As a result, PHMSA and FMCSA initiated this rulemaking to evaluate current standards for the storage of explosives in transportation. We published a new ANPRM on November 16, 2005 (70 FR 69493), in which we summarized government and industry standards for explosives storage (which vary greatly by mode of transportation, type of explosives, and whether the explosive is in transportation) and requested comments on a list of concerns regarding the risks posed by the storage of explosives while in transportation. The November 16, 2005 ANPRM in this docket and the comments are accessible through the Federal eRulemaking Portal (*http://www.regulations.gov*).

In the ANPRM, PHMSA solicited comments concerning measures to reduce the risks posed by the storage of explosives while they are in transportation and whether regulatory action is warranted. We invited commenters to address issues related to security and storage of other types of high-hazard materials. In addition, the ANPRM provided detailed information addressing the following regulations and industry standards:

- United States Coast Guard Requirements applicable to explosives storage (33 CFR parts 101–126).
- Bureau of Alcohol, Tobacco, Firearms, and Explosives Regulations for explosives in commerce (27 CFR Part 555).
- National Fire Protection Association (NFPA) 498, "Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives" (NFPA 498).
- Institute of Makers of Explosives Safety Library Publication No. 27, "Security in Manufacturing, Transportation, Storage and use of Commercial Explosives."
- Surface Deployment and Distribution Command, "SDDC Freight Traffic Rules Publication NO. 1C (MFTRP NO. 1C)".

C. July 3, 2008 ANPRM and Public Meeting

On July 3, 2008 PHMSA published a further ANPRM under this docket to re-open the comment period, and announce a public meeting (73 FR 38164) to provide an additional opportunity for interested persons to submit more focused comments on safety issues associated with the storage of explosives transported by highway and standards for establishing, approving, and maintaining safe havens for the temporary storage of explosives during motor vehicle transportation. As discussed above, there are currently no minimum or uniform criteria for Federal, state, or local governments to rely on for the approval of safe havens.

D. July 27, 2010 NPRM

On July 27, 2010, PHMSA published a NPRM in coordination with FMCSA to propose regulations to enhance existing attendance requirements for explosives stored during transportation by designating the National Fire Protection Association (NFPA) standard 498. In the NPRM PHMSA proposed that an existing standard—NFPA 498—be designated as a federally approved standard for the construction and maintenance of safe havens used for unattended storage of 1.1, 1.2, and 1.3 explosives. As summarized in the NPRM, NFPA provides as follows:

1. A safe haven must be located in a secured area that is no closer than 300 ft (91.5m) to a bridge, tunnel, dwelling, building, or place where people work, congregate, or assemble. The perimeter of the safe haven must be cleared of weeds, underbrush, vegetation, or other combustible materials for a distance of 25 ft (7.6 m). The safe haven must be protected from unauthorized persons by warning signs, gates, and patrols. NFPA 498 sections 4.1.1, 4.1.2, 4.1.3, and 4.1.4.

2. When vehicles carrying Class 1 materials are parked in a safe haven, the entrance to the safe haven must be marked with this warning sign:

DANGER

NO SMOKING

NEVER FIGHT EXPLOSIVE FIRES

VEHICLES ON THIS SITE CONTAIN EXPLOSIVES

CALL _____

The sign must be weatherproof with reflective printing, and the letters must be at least 2 in. high. NFPA 498 sections 4.1.4.1 and 4.1.4.2.

3. Watch personnel must be made aware of the explosives, corresponding emergency response procedures, and NFPA 601. NFPA 498 sections 4.1.5 4.1.5.1.

4. A stand-by vehicle in good operating condition that is capable of moving the explosives trailers must be kept at the safe haven. NFPA 498 section 4.1.5.2.

5. Fire protection equipment must be provided—to include portable fire extinguishers and a dependable water supply source. NFPA 498 section 4.1.6.

6. Vehicles will be inspected before they enter the safe haven. Any risks (e.g., hot tires, hot wheel bearings, hot brakes, any accumulation of oil or grease, any defects in the electrical system, or any apparent physical damage to the vehicle that could cause or contribute to a fire) that are identified by the inspector must be corrected before the vehicle is permitted to enter the safe haven. NFPA 498 section 4.2.1.1, 4.2.1.2, and 4.2.1.3.

7. Trailers are to be positioned in the safe haven with spacing of not less than 5ft (1.5m) maintained in all directions between parked trailers. Additionally, trailers may not be parked in a manner that would require their movement to move another vehicle. Immediately upon correctly positioning a loaded

trailer the tractor must be disconnected and removed from the safe haven. NFPA 498 sections 4.2.2, 4.2.3, and 4.2.4.

8. Trailers in the safe haven must be maintained in the same condition as is required for highway transportation, including placarding. NFPA 498 section 4.2.5.

9. Where a self-propelled vehicle loaded with explosives is stored in a safe haven it must be parked at least 25 ft (7.6 m) from any other vehicles containing explosives, and must be in operable condition, properly placarded, and in a position and condition where it can be moved easily in case of necessity or emergency. NFPA 498 section 4.2.6.

10. No explosives may be transferred from one vehicle to another in a safe haven except in case of necessity or emergency. NFPA 498 section 4.2.7.

11. No vehicle transporting other hazardous materials may be stored in a safe haven unless the materials being transported are compatible with explosives. NFPA 498 section 4.2.8.

12. Except for minor repairs, no repair work involving cutting or welding, operation of the vehicle engine, or the electrical wiring may be performed on any vehicle parked in a safe haven that is carrying explosives. NFPA 498 sections 4.3.1.1 and 4.3.1.2.

13. Except for firearms carried by law enforcement and security personnel where specifically authorized by the authority having jurisdiction, smoking, matches, open flames, spark-producing devices, and firearms are not permitted inside or within 50 ft (15.3 m) of the safe haven, loading dock, or interchange lot. NFPA 498 section 4.3.2 and 4.3.3.

14. Electric lines must not be closer than the length of the lines between the poles, unless an effective means to prevent vehicles from contact with broken lines is employed. NFPA 498 section 4.3.4.

15. When any vehicle transporting explosives is stored in a safe haven, at least one trained person, 21 years of age or older, must be assigned to patrol the safe haven on a dedicated basis. Safe havens located on explosives manufacturing facilities or at motor vehicle terminals must employ other means of acceptable security such as existing plant or terminal protection systems or electronic surveillance devices. NFPA 498 section 4.4.1 and 4.4.2.

16. The safe haven operator must maintain an active safety training program in emergency response procedures for all employees working at the safe haven. NFPA 498 section 4.5.

17. Training in accordance with 49 CFR Part 172, Subpart H is required for employees involved with the loading, shipping, or transportation of explosives. NFPA 498 section 4.5.2.

18. The safe haven operator must notify in writing the local law enforcement, fire department, and other emergency response agencies of the safe haven and the maximum quantity of Class 1 materials authorized for the safe haven. The operator must maintain copies of any approval documentation and notifications. NFPA 498 sections 4.6.1 and 4.6.2.

III. Comments on July 27, 2010 NPRM

PHMSA received comments on the NPRM, from the following individuals and organizations:

(1) Boyle Transportation (Boyle).

(2) American Trucking Associations, Inc. (ATA).

(3) Institute of Makers of Explosives (IME).

(4) National Fire Protection Association (NFPA).

(5) Paul Melander, an employee of FMCSA.

(6) Leigh Fabbri, an individual.

IME, NFPA, and Mr. Melander recommend the incorporation by reference of the 2010 edition of NFPA 498 as opposed to the 2006 edition as included in this NPRM. The commenter is correct, since the July 27, 2010 publication of the NPRM, NFPA has made a new version of the NFPA 498 Standard available. PHMSA has reviewed the 2010 edition of the Standard for consistency with the 2006 edition, as applicable to safe havens. PHMSA did not identify any significant difference between the two editions. Therefore, PHMSA agrees with the commenter and is incorporating the 2010 edition of the NFPA 498 standard.

In its comments IME expresses support for PHMSA's proposal not to impose material quantity and/or interim storage time limits and states that existing rules for the transportation of hazardous materials without unnecessary delay, and commercial expectations for the timely delivery of shipments by consignees mitigate the need for additional arbitrary limitations. PHMSA agrees with this comment and is not incorporating material quantities and/or interim storage limits in this final rule.

IME also supports PHMSA's proposal not to impose in transit storage standards used by the US Department of Defense or the ATF for permanent storage of explosives. It states that no justification has been made to warrant the application of such standards to commercial shipments given existing FMCSA/PHMSA requirements and the new standards that will result from this rulemaking. PHMSA agrees with the commenter and is not incorporating transit storage standards in this final rule.

ATA expresses concern about the level of participation by FMCSA in this rulemaking. It notes that the docket has been substantially narrowed in scope from what PHMSA initially proposed and that PHMSA proposed to use the scope established by FMCSA's attendance rules. ATA states it anticipated that PHMSA would invite FMCSA to join as an author of this proposal since "safe havens" are given a definition by the FMCSRs. ATA indicates that PHMSA's coordination with FMCSA is not sufficient to address related safe haven issues stemming from the FMCSRs and that these issues can only be addressed by amendment to the FMCSRs as well and the HMR. It recommends that 49 CFR 397.5 be amended: (1) To reference the edition of "safe haven" standards that will be incorporated by reference into the HMR; (2) to eliminate the requirement for written Federal approval; and (3) to accommodate other recommended changes to the safe haven attendance standard, such as replacing the requirement in 49 CFR 397.5(d)(1), that bailees have an "unobstructed field of view" of a vehicle during in-transit storage, with a requirement that allows vehicle monitoring by electronic surveillance as well as physical observation.

Boyle and Mr. Melander suggest that the FMCSR § 397.5 should be changed to reflect the updated definition of safe haven (see § 397.5(d)(3)). In each of these regards, FMCSA has advised PHMSA that changes to 49 CFR Part 397 may occur in a future rulemaking.

Boyle also suggests that although the term "safe haven" is defined in the standard, the full title "*Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives*" better encompasses the fact that a safe haven area may be co-located or contained within a truck terminal. Therefore, the commenter suggests modifying § 177.835(k) to read more precisely: "A facility that conforms to NFPA 498 "*Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosive*" (IBR, *see* § 171.7 of the subchapter) constitutes a Federally approved safe haven for the storage of vehicles containing Division 1.1, 1.2 or 1.3 materials." PHMSA disagrees with the commenter and the full title of NFPA 498 will not be added to the regulatory language. Section 171.7(a) provides the full title of the standard. This is consistent with current

practices for referencing IBR materials throughout the HMR.

IME recommends several other requirements for safe havens that are not currently specified in NFPA 498. These include requirements for operational plans, communications, and recordkeeping. The commenter adds that the PHMSA proposal does not address the merits of these additional operational and administrative conditions at all. PHMSA believes that adopting NFPA 498, which includes the incorporation of PHMSA training requirements, adequately address the concerns expressed by the commenter.

IME also suggests that PHMSA address theft and loss of explosives by referencing the theft/loss reporting standards of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the HMR. The commenter indicates that this standard has a security benefit as well. In this regard, IME requests the presence of a robust risk assessment of the safe havens in the final rule. A risk assessment is a component of the security plan requirement in the current HMR. It questions whether security plan risk assessments are sufficient for safe havens, and suggests that risk assessments at safe havens should consider both safety and security risks to exposed populations. IME asks PHMSA not to propose a "safety" rule for safe haven operations without considering "security" needs at such sites. PHMSA has reviewed NFPA 498 and concluded that the standard provides adequate measures to ensure that unattended explosives are stored safely during transportation. NFPA 498 provides safety based requirements for the construction and maintenance of safe havens including standards for vehicle parking, control of ignition sources, security against trespassers, employee training, and notification of authority having jurisdiction. Section 4.5 of NFPA 498 requires operators of all safe havens to maintain an active safety training program that includes:

1. Emergency instructions;
2. Training for employees involved in the loading, shipping, or transportation of explosives that covers 49 CFR 172.700–172.704 (including security training); and
3. Familiarity with the Emergency Response Guidebook (ERG).

Separately, persons performing shipper or carrier functions are required to assess security risks in transportation in accordance with 49 CFR part 172, subpart I. This specifically includes measures to address en route security during transportation, which includes interim storage at a safe haven. At the same time, any decision to use a safe haven as compared to other options (*e.g.,* driver teams) is part of an individual carrier's assessment. It is the carrier's responsibility to fully assess the safety and security risks along the route. Separately, adding theft or loss reporting requirement is outside of the scope of this rulemaking. ATF requirements indicate that any person who has knowledge of the theft or loss of any explosive materials from their stock must report such theft or loss within 24 hours of discovery to ATF and to appropriate local authorities. (27 CFR 55.30, implementing 18 U.S.C. 842(k), requires that the report of theft or loss be made by telephone and in writing to ATF). The requirements for safe havens contained in NFPA 498 coupled with the carrier's assessment of safety and security risks along routes will enable carriers to make more uniform and risk-based decisions regarding the use of safe havens. Mr. Melander expresses concern with NFPA 498, Section 4.1.4.1 which requires signage warning of explosive danger. Specifically, the commenter suggests advertising to the public the location of explosives may present some security risks. The commenter questions whether, in accordance with NFPA 498, Section 4.2.1.1 and 4.2.1.2, the inspection for hot tires, hot wheel bearing, hot brakes will require infra-red devices and who will establish these inspection methods. Based on NFPA 498, Section 4.2.8 which states "No vehicle transporting other hazardous materials shall be parked in a safe haven unless the materials being transported are compatible with explosives" the commenter asks how will compatibility be determined (i.e., will it be based on § 177.848). Mr. Melander also asks for clarification on what authority will have jurisdiction in granting law enforcement permission to carry firearms in safe havens in accordance with Section 4.3.3.

Based on NFPA 498, Section 4.3.3 "the authority having jurisdiction" will decide which law enforcement and security personnel will be permitted to carry firearms within a safe haven. As stated above, PHMSA considers that NFPA 498 adequately balances safety and security. We also believe that incorporating NFPA 498 as written will promote a consistent understanding of the safe haven standards.

Boyle suggests that, if the intent of PHMSA is to improve the safety and security conditions under which vehicles with explosives Division 1.1, 1.2 and 1.3 are parked while in-transit then all facilities where these vehicles are parked for extended periods (e.g., more than 2 hours) should be mandated to comply with NFPA 498. IME also raises concerns about preemption. It states that, by issuing these standards under the HMR, the preemptive effect of Federal hazardous materials transportation law is triggered. The commenter expresses disappointment by PHMSA's statement that the proposed new standard "does not preempt state [and local] requirements." IME recommends that PHMSA ask FMCSA to strike 397.5(d)(3) and replace the condition for state and local government approval with the national consensus standard for safe havens, NFPA 498. It states that absent such regulatory change, PHMSA perpetuates the ability of local interests to arbitrarily deny the location of safe havens and that the current regulatory default to state and local written approval is a primary reason why so few safe havens currently exist. It also states that the definition is consistent with Federal hazmat law, which clearly recognizes the critical safety impact of activities performed in advance of transportation by persons who cause the transportation of hazardous materials in commerce.

Leigh Fabbri indicates that the HMR should provide the state or local community the ability to prohibit a safe haven in a location where appropriate safety cannot be provided, for example in high population areas and near unprotected buildings. The commenter suggests that local authorities that have knowledge of planned future development for an area should make the decision on the location of safe havens based on the conditions at the time the transportation company seeks the safe haven designation and existing community planning.

PHMSA sees no need to preempt or preclude State or local requirements for a safe haven, and considers that any specific non-Federal requirements regarding the "handling" of explosive materials at a safe haven can better be dealt with in a separate proceeding. In this final rule, PHMSA is adopting NFPA 498 as a Federally approved standard that may be used to construct, maintain, or evaluate a safe haven, but we are not mandating the use of the standard.

IV. Discussion of Requirements

In this final rule, PHMSA is incorporating NFPA 498 into the HMR. NFPA 498 is an accepted standard that imposes rigorous safety requirements on facilities at which explosives are temporarily stored during transportation. The standard is tailored to the risks posed by commercially transported explosives. In this final rule, any facility that conforms to the safe

haven requirements specified in NFPA 498 would be authorized for use as a safe haven. By specifically identifying a standard for safe havens PHMSA is enhancing the current level of safety. Note that nothing in this final rule is intended to preempt state and local zoning ordinances, building permits, land use restrictions, or other similar requirements that may apply to construction and operation of a safe haven.

In addition, we urge safe haven owners to utilize available explosive distancing tables or risk assessment tools when selecting locations for safe havens. Further, we encourage owners to share this information with state and local officials to support safe haven development. In all cases, owners must fully consider the risk to persons and the surrounding area from the explosives facility.

In accordance with the comments received and public meeting discussion this final rule adopts the following specific changes:

Section 171.7. We are amending paragraph (a)(3) by adding a reference to NFPA 498—Standard for Safe Havens and Interchange Lots for Vehicles.

Section 177.835. We are adding a new paragraph (k) to clearly indicate that Division 1.1, 1.2, and 1.3 explosives may be left unattended by the carrier in a safe haven that meets NFPA 498. This addition would provide a clear, consistent, and measurable Federal requirement for the development and operation of safe havens.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Orders 12866 and 13563 require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." The incorporation of standards for safe havens into the HMR does not impose significant burden on the explosive industry. The adoption of existing standards applicable to the safe storage of Division 1.1, 1.2, and 1.3 explosives in safe havens provides a clear and specific mechanism for the construction and maintenance of safe havens. This change provides a Federally approved standard for safe havens in place of the existing arbitrary requirement that allows for state, local, or Federal approval of safe havens.

As described in the ANPRM comments and during the August 7, 2008 public meeting, the explosives industry indicates that it does not generally rely on safe havens for the attendance of explosives in transportation, but rather on team drivers to move explosives shipments. In most instances team drivers are a safe, efficient, and cost effective means of transporting explosives. These changes will provide explosives carriers with an optional means of compliance; therefore, any increased compliance costs associated with the proposals in this final rule would be incurred voluntarily by the explosives industry. Ultimately, we expect each company to make reasonable decisions based on its own business operations and future goals. Thus, costs incurred if a company elects to rely on a safe haven to fulfill attendance requirements would be balanced by the safety and security benefits accruing from the decision.

C. Executive Order 13132

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. State representatives participating in the public meeting expressed support for the proposed incorporation of safe haven standards into the HMR. The final rule provides an option for safe havens to be developed and operated based on existing safety standards. It does not preempt state requirements (e.g., state and local zoning ordinances, building permits, land use restrictions, or other similar requirements). Safe haven owners must continue to follow state and local requirements as applicable.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination With Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The final rule will not impose increased compliance costs on the regulated industry. Rather, the final rule incorporates current standards for the construction and maintenance of safe havens. Overall, this final rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

F. Executive Order 13272 and DOT Regulatory Policies and Procedures

This notice has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

G. Paperwork Reduction Act

There are no new information collection requirements in this proposed rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates, under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov.*

K. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. We requested comments on the potential environmental impacts of regulations applicable to the storage of explosives transported in commerce. We asked for comments on specific safety and security measures that would provide greater benefit to the human environment, or on alternative actions the agency could take that would provide beneficial impacts. No commenters addressed the potential environmental impacts of the proposals in the ANPRM or NPRM.

Safe havens promote the safe storage of hazardous materials in transportation. Safe havens ensure that explosives are stored in a manner that protects them from release into the environment. This final rule does not prohibit or promote the development of safe havens; rather, it ensures that existing and future safe havens meet minimum design and safety criteria. The impact on the environment if any would be a reduction in the environmental risks associated with the unattended storage of explosives in transportation. As a result, we have determined that there are no significant environmental impacts associated with this rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Incorporation by reference, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub L. 104–134 section 31001.

■ 2. In § 171.7, in the paragraph (a)(3) table, under the entry "National Fire Protection Association," the organization's mailing address is revised and the entry "NFPA 498—Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives, 2010 Edition" is added.

The revision and addition read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
National Fire Protection Association, 1 Batterymarch Park, Quincy, MA, 1–617–770–3000, www.nfpa.org.	
* * * * * * *	
NFPA 498–Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives, 2010 Edition	177.835
* * * * * * *	

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 3. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 4. In § 177.835 a new paragraph (k) is added to read as follows:

§ 177.835 Class 1 materials.

* * * * *

(k) *Attendance of Class 1 (explosive) materials.* Division 1.1, 1.2, or 1.3 materials that are stored during transportation in commerce must be attended and afforded surveillance in accordance with 49 CFR 397.5. A safe haven that conforms to NFPA 498 (IBR, see § 171.7 of the subchapter) constitutes a federally approved safe haven for the unattended storage of vehicles containing Division 1.1, 1.2, or 1.3 materials.

Issued in Washington, DC, on May 27, 2011, under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2011–13837 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110303179–1290–02]

RIN 0648–XA163

Fisheries of the Northeastern United States; 2011 Specifications for the Spiny Dogfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS announces specifications and management measures for the spiny dogfish fishery for the 2011 fishing year (FY) (May 1, 2011, through April 30, 2012). NMFS is implementing a spiny dogfish quota of 20 million lb (9,071.85 mt) for FY 2011, and is maintaining the possession limit of 3,000 lb (1.36 mt). These measures are consistent with the Spiny Dogfish Fishery Management Plan (FMP) and promote the utilization and conservation of the spiny dogfish resource.

DATES: Effective July 7, 2011, through April 30, 2012.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (MAFMC), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State St, Dover, DE 19901. The final EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov.*

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2276, and are also available via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fisheries Management Specialist, phone: 978–675–2179, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998. Consequently, the Magnuson-Stevens Act required NMFS to prepare measures to end overfishing and rebuild the spiny dogfish stock. During 1998 and 1999, the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint FMP, with the MAFMC designated as the administrative lead. The FMP implemented a rebuilding program that held fishing mortality rates to a level that would allow the stock to rebuild and that specified a semi-annual quota, allocating 57.9 percent of the coastwide quota to the fishery in Period 1 (May 1–October 30) and 42.1 percent of the quota in Period 2 (November 1–April 30). The FMP also prohibits "finning," with a maximum of 5 percent fin to carcass ratio by weight; allows for a framework adjustment process; and implements annual FMP review, permit and reporting requirements for the spiny dogfish fishery, and other general administrative requirements (65 FR 1557, January 11, 2000).

The regulations implementing the Spiny Dogfish FMP at 50 CFR part 648, subpart L, outline the process for specifying the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) necessary to ensure that the target fishing mortality rate (target F) specified in the FMP will not be exceeded in any FY (May 1–April 30), for a period of 1–5 FYs.

The regulations at § 648.230(b) specify that the Spiny Dogfish Monitoring Committee (MC), which is comprised of representatives from states; MAFMC staff; NEFMC staff; NMFS staff; academia; and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions), recommend to the Council's Joint Spiny Dogfish Committee (Joint Committee) a commercial quota and other management measures necessary to achieve the target F for 1–5 FYs based on the best available information. The Joint Committee considers the MC's recommendations and any public comment in making its recommendation to the two Councils. The Councils then review the recommendations of the MC and Joint Committee separately and make their recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to assure that the target F will not be exceeded. NMFS then publishes proposed measures for public comment.

A proposed rule for this action was published in the **Federal Register** on March 17, 2011 (76 FR 14644), with public comment accepted through April 18, 2011. Consistent with the Councils' recommendations, NMFS proposed an FY 2011 commercial quota of 20 million lb (9,071.85 mt), a level that will prevent overfishing, after accounting for other sources of fishing mortality (U.S. discards, recreational catch, and Canadian landings). NMFS also proposed maintaining the possession limit of 3,000 lb (1.36 mt) for FY 2011. A complete discussion of the development of the specifications and management measures appears in the preamble of the proposed rule and is not repeated here.

Final 2011 Specifications and Management Measures

The spiny dogfish commercial quota for FY 2011 is 20 million lb (9,071.85 mt). The current possession limit of 3,000 lb (1.36 mt) remains unchanged. As specified in the FMP, quota Period 1 (May 1 through October 31) is allocated 57.9 percent of the quota (11,580,000 lb (5,252.6 mt)), and quota Period 2 (November 1 through April 30) is allocated 42.1 percent of the quota (8,420,000 lb (3,819.25 mt)). The 2011 spiny dogfish commercial quota is consistent with the 20-million-lb quota adopted by the Atlantic States Marine Fisheries Commission (Commission) on November 12, 2010. However, on March 31, 2011, the Commission approved Addendum 3 to the Interstate FMP to divide the southern region annual quota of 42 percent into state-specific shares and allows for quota transfer between states, rollovers of up to 5 percent, and state-specified possession limits. Although this final rule implements the same commercial quota as the Commission for FY 2011 (20 million lb), the final 2011 quota implemented by the Commission, adjusting for overages from the previous year, is approximately 19.5 million lb (a difference of 500,000 lb from the Federal quota). The issue of quota allocation will be reconsidered by the Councils in the upcoming Amendment 3 to the FMP.

Comments and Responses

NMFS received three comments on the proposed measures by three individuals.

Comment 1: One individual opposed the spiny dogfish commercial quota increase for FY 2011 and commented that the commercial quota should be decreased.

Response: The spiny dogfish fishery was declared rebuilt on June 22, 2010, based an analysis of biological reference points presented at the Transboundary Resource Assessment Committee (TRAC) meeting in January 2010. In the fall of 2010, the NMFS Northeast Fisheries Science Center (NEFSC) updated the spiny dogfish stock status using the population modeling approach from the 43rd Stock Assessment Workshop (43rd SAW, 2006), 2009 catch data, and results from the 2010 spring bottom trawl survey. The update specified that the female spawning stock biomass (SSB) for 2010 is 164,066 mt (362 million lb), about 3 percent above the maximum spawning stock biomass, SSB_{max} (159,288 mt), the maximum sustainable yield biomass (B_{msy}) proxy. The 2010 NEFSC stock status update confirmed that overfishing of spiny dogfish is not occurring, the stock is not overfished, and the stock has been rebuilt since 2008. The quota increase of 5 million lb (2,268 mt) for FY 2011 is justified because as the stock continues to be rebuilt, the fishery is no longer constrained to $F_{rebuild}$, and fishing mortality rates can increase without compromising the status of the current or future stock.

Comment 2: Two individuals supported the increase in the FY 2011 commercial spiny dogfish quota. One individual noted that maintaining the current possession limit of 3,000 lb (1.36 mt) would not allow for the development of a directed spiny dogfish fishery.

Response: NMFS agrees that increasing the FY 2011 commercial spiny dogfish quota will allow utilization of the spiny dogfish resource, while still protecting the stock from overfishing.

NMFS does not agree that the possession limit should be increased for FY 2011. The FMP was developed to halt depletion of reproductively mature female spiny dogfish and to allow the stock to rebuild. Because the commercial fishery concentrated primarily on mature females, the FMP established possession limits to control the directed fishery for spiny dogfish and allow for the reproductively mature female portion of the population to rebuild. The Councils did not consider alternatives that would have increased the FY 2011 possession limits specifically to limit the development of a large-scale directed fishery and allow the stock to fully rebuild. It is for these reasons that the possession limit is maintained at 3,000 lb (1.36 mt) for FY 2011.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

Pursuant to section 604 of the Regulatory Flexibility Act, NMFS has prepared a final regulatory flexibility analysis (FRFA), which is included in this final rule, in support of the FY 2011 spiny dogfish specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and this final rule and is not repeated here.

Summary of Public Comment on IRFA and Agency Response

NMFS received three comments from three individuals on the proposed measures. While the comments were not specifically directed to the IRFA, two individuals were supportive of the positive economic impact the increase in the commercial quota would have on the spiny dogfish fishing industry. In addition, one individual stated that due to the low ex-vessel value of spiny dogfish, the possession limit should be increased to allow for the development of a directed spiny dogfish fishery that can supply a burgeoning market. The response to this comment is in the "Comments and Responses" section in the preamble to this rule.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The entities potentially affected by this rule include vessels with Federal spiny dogfish permits. According to NMFS permit file data, 3,020 vessels were issued Federal spiny dogfish permits, while only 398 of these vessels were active in the fishery in FY 2009. All of these potentially affected businesses are considered small entities under the standards described in NMFS guidelines because their gross receipts do not exceed $4 million annually (13 CFR 121.201(2006)).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

NMFS and the Council considered three distinct alternatives for this rule, which are assessed in greater detail in the IRFA. The potential impacts of each alternative were evaluated using information from FY 2009, as that is the most recent year for which data are complete. The action recommended in this rule (Alternative 2) specifies a commercial quota for spiny dogfish of 20 million lb (9,071.85 mt), which is higher than quota in the Status Quo (Alternative 1) option that would maintain the FY 2011 commercial quota for spiny dogfish at 15 million lb (5,443.11 mt). Alternative 3 would specify a commercial quota of 31.4 million lb (14,242.8 mt), a level set to achieve the existing F_{target} of 0.207. None of the alternatives propose to modify the current 3,000-lb (1.36-mt) possession limit.

Assuming that the quota will be fully attained and that FY 2011 prices for spiny dogfish will be similar to those in FY 2009, Alternatives 2 and 3 would increase revenue levels for affected businesses, thereby having a positive economic impact on small entities. The positive economic impacts would be greater under Alternative 3 than Alternative 2. In contrast, Alternative 1 (status quo) would maintain the current revenue levels. Total spiny dogfish revenue from the last complete FY (2009) was reported as $2.360 million. Using the average FY 2009 price/lb

($0.22), landing the full FY 2010 quota of 15 million lb (5,443.11 mt), (and also the FY 2011 quota under Alternative 1) would yield $3.300 million in fleet revenue. Applying the same approach, revenue would be expected to increase to $4.400 million under the proposed action (Alternative 2), and $6.898 million under Alternative 3. The quota level under Alternative 2 will allow the highest level of harvest of spiny dogfish while taking into account scientific uncertainty about the stock. Although the level of increased revenue for small entities will be less than under Alternative 3, Alternative 2 is more likely to prevent overfishing of the spiny dogfish resource and promote a more stable stream of commercial landings and revenues over the long term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (guide) was prepared and will be sent to all holders of permits issued for the spiny dogfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Northeast Regional Administrator (see **ADDRESSES**) and may be found at the following Web site: *http://www.nero.noaa.gov/nero/.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13974 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110223162–1295–02]

RIN 0648–XA184

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2011 Management Measures; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS established fishery management measures for the 2011 ocean salmon fisheries off Washington, Oregon, and California and the 2012 salmon seasons opening earlier than May 1, 2012. The final rule published on May 4, 2011, included an incorrect area description for minimum size requirements for the commercial salmon fishery. This action corrects the incorrect language.

DATES: Effective June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Busby at 206–526–4323.

SUPPLEMENTARY INFORMATION: A final rule published May 4, 2011 (76 FR 25246), describes annual management measures for managing the harvest of salmon in the area managed by the Pacific Fishery Management Council (Council). This correcting amendment revises a table in that rule to make it consistent with the text of the rule and the Council's recommendations.

Need for Correction

In the final rule regarding 2011 salmon management measures (76 FR 25246, May 4, 2011), Section 1, part B on page 25251 consists of a table of Minimum Size for salmon caught in the commercial fishery. There are two errors in this table, rendering it inconsistent with the rule text and the Council's recommendations for the 2011 salmon management measures, as adopted at their April 2011 meeting. The corresponding text describing the fishing area and geographic boundaries in Section 1, part A, is correct as published on May 4, and is consistent with the Council's recommendations for the 2011 management measures for the salmon fishery. In the table, the area listed as "Cape Falcon to Horse Mt." is corrected to read "Cape Falcon to OR/CA Border." The area listed as "Horse Mt. to US–Mexico Border" is corrected to read "OR/CA Border to U.S./Mexico Border." The table here replaces the table in 76 FR 25246, Section 1:

B. Minimum Size (Inches) (See C.1)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR	28.0	21.5	16.0	12.0	None.
Cape Falcon to OR/CA Border	28.0	21.5	.....	.....	None.
OR/CA Border to U.S./Mexico Border	27.0	20.5	.....	.....	None.

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.6 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 16.0in = 40.6 cm, and 12.0 in = 30.5 cm.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for additional public comment for this action as notice and comment would be unnecessary and contrary to the public interest. Notice and comment are unnecessary and contrary to the public interest because this action simply makes the above-referenced table consistent with the text in the original final rule and the Council's recommended action. This correction does not affect the results of analyses conducted to support management decisions in the salmon fishery nor change the total catch of salmon. The correction eliminates an inconsistency between the table, and the text and the Council's recommendation, and therefore eliminates any confusion that the inconsistency might create for the public. If this rule is not implemented immediately, the public will have incorrect information regarding the geographic area and boundaries for the salmon fishery, which will cause confusion and will be inconsistent with the Council's recommendation and with the analytical documents for this rulemaking. No aspect of this action is controversial and no change in operating practices in the fishery is required.

For the same reasons, pursuant to 5 U.S.C. 553(d), the AA finds good cause to waive the 30-day delay in effective date. If this rule is not implemented immediately, the public will have incorrect information regarding the geographic area and boundaries for the salmon fishery, which will cause confusion and will be inconsistent with the Council's recommendation and with the analytical documents for this rulemaking.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

This final rule is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 31, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13975 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 109
Tuesday, June 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2011–0129]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1253, "Preoperational Testing of Emergency Core Cooling Systems for Pressurized-Water Reactors".

FOR FURTHER INFORMATION CONTACT: Mekonen M. Bayssie, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–251–7489 or *e-mail: Mekonen Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC'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.

The draft regulatory guide (DG), entitled, "Preoperational Testing of Emergency Core Cooling Systems for Pressurized-Water Reactors," is temporarily identified by its task number, DG–1253, which should be mentioned in all related correspondence. DG–1253 is proposed Revision 2 of Regulatory Guide 1.79, dated September 1975.

This guide describes methods that the NRC's staff considers acceptable to implement Title 10, of the *Code of Federal Regulations,* part 50, "Domestic Licensing of Production and Utilization Facilities" (10 CFR part 50), Appendix A, "General Design Criteria for Nuclear Power Plants," with regard to preoperational testing features of emergency core cooling systems (ECCSs) for pressurized-water reactors (PWRs). This regulatory guide also describes methods that the NRC staff finds acceptable for preoperational testing of ECCS structures, systems, and components (SSCs), in accordance with the regulations in 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," Subpart B, "Standard Design Certifications," and Subpart C," Combined Licenses."

II. Further Information

The NRC staff is soliciting comments on DG–1253. Comments may be accompanied by relevant information or supporting data and should mention DG–1253 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: Please include Docket ID NRC–2011–0129 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–2011–0129. 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.* The Regulatory Analysis is available electronically under ADAMS Accession Number ML110110489.
- *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–2011–0129.

Comments would be most helpful if received by August 5, 2011. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1253 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of

the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html),* under Accession No. ML110110480.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 27th day of May, 2011.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–13970 Filed 6–6–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0516; Airspace Docket No. 11–ANM–12]

Proposed Modification of Class E Airspace; Forsyth, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Forsyth, MT. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Tillitt Field Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 22, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0516; Airspace Docket No. 11–ANM–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0516 and Airspace Docket No. 11–ANM–12) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0516 and Airspace Docket No. 11–ANM–12." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Tillitt Field Airport, Forsyth, MT, to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Tillitt Field Airport. This action would enhance the safety and management of aircraft operations at the airport.

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

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use

of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Tillitt Field Airport, Forsyth, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Forsyth, MT [Modified]

Tillitt Field Airport, MT
(Lat. 46°16′16 ″ N., long. 106°37′26 ″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tillitt Field Airport, and within 2.5 miles north and 5.5 miles south of the 075° bearing of the airport extending from the 7-mile radius to 13 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 46°31′00″ N., long. 107°00′00″ W.; to lat. 46°22′00″ N., long. 106°03′00″ W.; to lat. 46°05′00″ N., long. 106°210′3″ W.; to lat. 46°00′00″ N., long. 107°15′00″ W.; to lat. 46°15′00″ N., long. 107°16′00″ W.; to lat. 46°20′00″ N., long. 107°00′00″ W., thence to the point of beginning.

Issued in Seattle, Washington on May 27, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–13944 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD46

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33–9204A; 34–64372A; File No. S7–16–11]

RIN 3235–AK65

Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping

AGENCY: Commodity Futures Trading Commission; Securities and Exchange Commission.

ACTION: Joint proposed rules; proposed interpretations; correction.

SUMMARY: The Commodity Futures Trading Commission and the Securities and Exchange Commission published a document in the **Federal Register** of May 23, 2011 that referenced an incorrect RIN and an incorrect cite in an authority citation. This correction is being published to correct both the RIN and the authority citation.

FOR FURTHER INFORMATION CONTACT: CFTC: Julian E. Hammar, Assistant General Counsel, at 202–418–5118, *jhammar@cftc.gov,* Mark Fajfar, Assistant General Counsel, at 202–418–6636, *mfajfar@cftc.gov,* or David E. Aron, Counsel, at 202–418–6621, *daron@cftc.gov,* Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; SEC: Matthew A. Daigler, Senior Special Counsel, at 202–551–5578, Cristie L. March, Attorney-Adviser, at 202–551–5574, or Leah M. Drennan, Attorney-Adviser, at 202–551–5507, Division of Trading and Markets, or Michael J. Reedich, Special Counsel, or Tamara Brightwell, Senior Special Counsel to the Director, at 202–551–3500, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

Correction

In the **Federal Register** of May 23, 2011, in FR Doc. 2011–11008, on page 29818, in the 10th line of the first column, the Security and Exchange Commission's RIN is corrected to read as noted above.

In the **Federal Register** of May 23, 2011, in FR Doc. 2011–11008, on page 29888, the authority citation in the second column reads as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 7, 7a, 7b, 8, 9, 10, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 21, 23, and 24.

Commodity Futures Trading Commission.

David A. Stawick,

Secretary. Securities and Exchange Commission.

Dated: June 1, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–13976 Filed 6–6–11; 8:45 am]

BILLING CODE 6351–01–P; 8011–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114206–11]

RIN 1545–BK21

Encouraging New Markets Tax Credit Non-Real Estate Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the Treasury Department and the IRS may address in regulations relating to the new markets tax credit. Specifically, this document invites comments from the public on how the new markets tax credit program may be amended to encourage non-real estate investments. The regulations will affect taxpayers claiming the new markets tax credit. The Treasury Department and the IRS have published separately in this issue of the **Federal Register**, a notice of proposed rulemaking REG–101826–11 modifying the new markets tax credit program by providing specific rules concerning a qualified community development entity's investment of certain returns of capital from non-real estate businesses.

DATES: Written and electronic comments must be submitted by September 6, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114206–11), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114206–11),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–114206–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposals, Julie Hanlon-Bolton, (202) 622–3040; concerning submissions, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 45D was added to the Internal Revenue Code by section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554, 114 Stat. 2763 (2000)) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418 (2004)); section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135, 119 Stat. 25 (2005)); section 102, Division A, of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432, 120 Stat. 2922 (2006)); section 302 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Pub. L. 110–343, 122 Stat 3765 (2008)); section 1403(a) of the American Recovery and Reinvestment Tax Act of 2009 (Pub. L. 111–5, 123 Stat 115 (2009)); and section 733 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. 111–312, 124 Stat 3296 (2010)).

Section 45D(a)(1) allows a new markets tax credit on certain credit allowance dates described in section 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE) described in section 45D(c).

Under section 45D(b)(1), an equity investment in a CDE is a *qualified equity investment* if, among other requirements: (A) The investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of section 45D by the CDE.

Section 45D(c)(1) provides that an entity is a CDE if, among other requirements, the entity is certified by the Secretary as a CDE.

Section 45D(d)(1) defines the term *qualified low-income community investment* to mean: (A) Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in section 45D(d)(2)); (B) the purchase from another CDE of any loan made by the entity that is a qualified low-income community investment; (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE.

Under section 45D(d)(2), a *qualified active low-income community business* is any corporation (including a nonprofit corporation) or partnership if for such year, among other requirements, (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, and (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community.

Under section 45D(d)(3), with certain exceptions, a *qualified business* is any trade or business. The rental to others of real property is a qualified business only if, among other requirements, the real property is located in a low-income community.

Groups and organizations representing investors, qualified community development entities, businesses, and other entities involved with the new markets tax credit program have submitted comments requesting additional guidance to encourage greater investment in non-real estate businesses. The commentators suggested that revising the new markets tax credit program to encourage investment in non-real estate businesses will bring increased amounts of capital to underserved businesses in low-income communities. The Treasury Department believes that revisions to the regulations under the new markets tax credit program would have a favorable effect on the ability of the program to benefit non-real estate businesses in low-income communities.

The new markets tax credit has been a successful tool for encouraging private sector investments in low-income communities. According to the Treasury Department's Community Development Financial Institutions Fund, through 2009, the new markets tax credit has helped to spur $16 billion of investments in approximately 3,000 businesses and real estate projects located in low-income communities throughout the country, including investments in manufacturing businesses, alternative energy companies, charter schools, health care facilities, and job training centers. Although new markets tax credit investments may be made in non-real estate businesses, the investments made to date have been predominantly in real estate projects. Through 2009, only 35 percent of new market tax credit dollars invested in qualified active low-income community businesses were invested in non-real estate businesses, and much of these investments supported real estate related projects (for example, purchasing or renovations of owner-occupied facilities).

The purpose of this document is to seek comments on measures that could facilitate greater investment in non-real estate businesses without disrupting the success of new markets tax credit real estate investments overall. The Treasury Department and the IRS have identified certain issues with regard to non-real estate businesses under the new markets tax credit program that may be considered for guidance or administrative pronouncements. The Treasury Department and the IRS invite comments from the public on the following issues and any other issues for which the taxpayers believe guidance would be necessary to promote greater investment in non-real estate businesses under the new markets tax credit program while still maintaining the structure of the credit that has been so successful for other types of investments.

A. Streamlined Substantiation Requirements for Second Tier CDEs Making Small Loans to Non-Real Estate Businesses

Under § 1.45D–1(d)(1)(iv)(A)(*1*), the term *qualified low-income community investment* includes any equity investment in, or loan to, any CDE (the second CDE) by a CDE (the primary CDE), but only to the extent that the second CDE uses the proceeds of the investment or loan in a manner described in § 1.45D–1(d)(1)(i) or (d)(1)(iii) and that would constitute a qualified low-income community investment if it were made directly by the primary CDE. The net effect of this provision is that, if the primary CDE makes a qualified low-income community investment into a second CDE, the primary CDE must ensure that the new markets tax credit proceeds are ultimately invested in a qualified active low-income community business and/or are used to provide financial counseling and other services. This added layer of substantiation has placed constraints on the ability of a primary CDE to invest funds in a second CDE—particularly in instances where the second CDE intends to make smaller sized loans to non-real

estate businesses because transaction and compliance monitoring costs are higher relative to the size of smaller loans than they are for larger, real estate-secured transactions.

The Treasury Department and the IRS are soliciting comments on whether the substantiation requirements governing investments under § 1.45D–1(d)(1)(iv)(A)(*1*) should be simplified in cases where: (i) The second CDE uses the new markets tax credit proceeds to make smaller-sized loans (for example, less than $250,000) to non-real estate businesses; (ii) neither the second CDE nor the non-real estate business receiving the new markets tax credit proceeds is affiliated with the primary CDE or the qualified equity investment investors; and (iii) the second CDE demonstrates that, at the time of initial investment in the non-real estate business, the non-real estate business receiving the new markets tax credit proceeds met some basic qualifying requirements (for example, the business is in a low-income community).

In particular, the Treasury Department and the IRS encourage taxpayers to submit comments on the following issues:

1. Would simplifying the substantiation requirements in the manner proposed facilitate greater new markets tax credit investment in non-real estate businesses? Are there other areas where § 1.45D–1 could be modified to achieve a similar outcome?

2. The Treasury Department and the IRS believe that, if there is to be a simplification of the substantiation requirements for these transactions, there may need to be a cap on the total transaction size. Is $250,000 the appropriate cap to put on the initial loan size? Should special considerations be made for follow-on investments and/or lines of credit? For example, should there be a cap on the total aggregate investment in one business? If so, what should that cap be?

3. What are the appropriate minimum requirements that a non-real estate business should satisfy in order for the second CDE to be able to take advantage of the simplified substantiation requirements (for example, the business must be located in a low-income community, employ community residents, etc. at the time of initial investment)? How should this be measured (for example, that substantially all of the real property is located in a low-income community)?

4. Should the Treasury Department and the IRS consider additional limitations (other than those specified) on unaffiliated CDEs or businesses? For example, should the regulations require that the second CDE be a non-profit entity or the affiliate of a non-profit entity?

B. Encouraging Equity Investments in Non-Real Estate Businesses

1. What non-statutory requirements in § 1.45D–1 can be revised to encourage CDEs to make equity investments in non-real estate businesses?

2. If consideration is given to potential changes to the *reasonable expectations* test of § 1.45D–1(d)(6)(i), what modifications would be most effective in encouraging equity investments in non-real estate businesses, while still preserving the purpose of the existing limitations on the *reasonable expectations* test?

Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written and electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

Drafting Information

The principal author of this advance notice of proposed rulemaking is Julie Hanlon-Bolton of the Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in its development.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–13981 Filed 6–3–11; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101826–11]

RIN 1545–BK04

New Markets Tax Credit Non-Real Estate Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations modifying the new markets tax credit program to facilitate and encourage investments in non-real estate businesses in low-income communities. The regulations will affect taxpayers claiming the new markets tax credit and businesses in low-income communities relying on the program. This document also provides a notice of a public hearing on these proposed regulations. The Treasury Department and the IRS have published separately in this issue of the **Federal Register** an advance notice of proposed rulemaking REG–114206–11 requesting comments on additional modifications to the new markets tax credit program to facilitate and encourage investments in non-real estate businesses in low-income communities.

DATES: Written or electronic comments must be received by September 8, 2011. Outlines of topics to be discussed at the public hearing scheduled for Thursday, September 29, 2011, must be received by September 8, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–101826–11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101826–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–101826–11). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Julie Hanlon-Bolton, (202) 622–3040; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide additional rules relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). Section 45D was added to the Code by section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554, 114 Stat. 2763 (2000)) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418 (2004)), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135, 119 Stat. 25 (2005)), Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432, 120 Stat. 2922 (2006)), section 302, Division C of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Pub. L. 110–343, 122 Stat. 3765 (2008)),

section 1403(a)(1) of the American Recovery and Reinvestment Tax Act of 2009 (Pub. L. 111–5, 123 Stat. 115 (2009)), and section 733 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. 111–312, 124 Stat. 3296 (2010)).

Groups and organizations representing investors, qualified community development entities, businesses, and other entities involved with the new markets tax credit program have submitted comments requesting additional guidance to encourage more investment in non-real estate businesses. The commentators suggested that revising the new markets tax credit program to encourage investment in non-real estate businesses will bring increased amounts of capital to underserved businesses in low-income communities. The Treasury Department and IRS believe that revisions of the reinvestment rules of the new markets tax credit program would have a positive impact on the ability of the program to benefit non-real estate businesses in low-income communities.

General Overview

Section 45D(a)(1) allows a new markets tax credit on certain credit allowance dates described in section 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE) described in section 45D(c).

Under section 45D(b)(1), an equity investment in a CDE is a *qualified equity investment* if, among other requirements: (A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of section 45D by the CDE.

Under section 45D(b)(2), the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in section 45D(f)(1) that is allocated to the CDE by the Secretary under section 45D(f)(2).

Section 45D(c)(1) provides that an entity is a CDE if, among other requirements, the entity is certified by the Secretary as a CDE.

Section 45D(d)(1) defines *qualified low-income community investment* to mean: (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in section 45D(d)(2)); (B) the purchase from another CDE of any loan made by the entity that is a qualified low-income community investment; (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE.

Under section 45D(d)(2)(A), a *qualified active low-income community business* is any corporation (including a nonprofit corporation) or partnership if for such year, among other requirements, (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, and (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community.

Under section 45D(d)(3), with certain exceptions, a *qualified business* is any trade or business. The rental to others of real property is a qualified business only if, among other requirements, the real property is located in a low-income community.

Explanation of Provisions

The new markets tax credit under section 45D has been a successful tool for encouraging private sector investments in low-income communities. According to the Treasury Department's Community Development Financial Institutions Fund, through 2009, the new markets tax credit has helped to spur $16 billion of investments in approximately 3,000 businesses and real estate projects located in low-income communities throughout the country, including investments in manufacturing businesses, alternative energy companies, charter schools, health care facilities, and job training centers. Although new markets tax credit investments may be made in non-real estate businesses, the investments made to date have been predominantly in real estate projects. Through 2009, only 35 percent of new market tax credit dollars invested in qualified active low-income community businesses were invested in non-real estate businesses, and much of this investment supported real estate related projects (for example, purchasing or renovations of owner-occupied facilities).

Currently, the new markets tax credit program generally requires that a CDE that receives returns on investments (including principal repayments from amortizing loans) re-invest those proceeds into other qualified low-income community investments during the seven-year credit period. This reinvestment requirement makes it difficult for CDEs to provide working capital and equipment loans to non-real estate businesses because these loans are ordinarily amortizing loans with a term of five years or less. Therefore, the proposed regulations would allow a CDE that makes a qualified low-income community investment involving a non-real estate business to invest certain returns of capital from those investments in unrelated certified community development financial institutions that are CDEs under section 45D(c)(2)(B) (certified CDFIs) at various points during the seven-year credit period. CDFIs are financial institutions that provide credit and financial services to underserved markets and populations. The CDE's reinvestment of returned capital in certified CDFIs would be considered to meet the reinvestment requirements of the new markets tax credit program. The proposed regulations would allow an increasing aggregate amount to be invested in certified CDFIs and treated as continuously invested in a qualified low-income community investment in the latter years of the seven-year credit period.

The proposed regulations define a non-real estate qualified active low-income community business as any business whose predominant business activity (measured by more than 50 percent of the business' gross income) does not include the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate. The purpose of the investment or loan must not be connected to the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate.

Proposed Effective Date

The rules contained in these regulations are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Request for Comments

The IRS and the Treasury Department invite taxpayers to submit comments on issues relating to how a CDE can make a qualified low-income community investment into a non-real estate qualified active low-income community

business. In particular, the IRS and the Treasury Department encourage taxpayers to submit comments on the following issues:

1. Will the proposed rules allowing a payment from a non-real estate qualified active low-income community business to be invested in a certified CDFI facilitate loans to, or equity investments in, non-real estate businesses? Should the rule take into account whether a loan to the non-real estate business is an amortizing or non-amortizing loan, the loan period, and the loan repayment schedule?

2. Will the proposed rules encourage venture capital investments in non-real estate businesses? If not, how can the proposed rules be modified to accomplish that goal?

3. Is the definition of a non-real estate qualified active low-income community business sufficient for CDEs and investors to rely on? Are the "more than 50 percent gross income" requirement and activity limitation the appropriate ways to define a non-real estate qualified active low-income community business?

4. Will CDEs be able to determine whether an entity satisfies the requirements to be a non-real estate qualified active low-income community business without incurring unduly burdensome costs?

5. Should a payment from a non-real estate qualified active low-income community business be permitted to be invested in entities other than a certified CDFI (or qualified low-income community investments)?

6. Should a qualified equity investment made before the effective date of the final regulations be eligible for designation as a non-real estate qualified equity investment?

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 29, 2011, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. In addition, all visitors must present photo identification to enter the building. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by September 8, 2011, and an outline of the topics to be discussed and the time to be devoted to each topic by September 8, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Julie Hanlon Bolton with the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.45D–1 is amended by:

1. Amending paragraph (a) as follows:

a. Adding entries for paragraphs (c)(8), (d)(9), (d)(9)(i), (d)(9)(ii), (d)(9)(ii)(A), (d)(9)(ii)(B), (d)(9)(ii)(C) and (h)(3).

b. Revising the entry for paragraph (d)(1)(i).

2. Revising paragraphs (c)(1)(iii), (c)(3)(ii), and (d)(1)(i).

3. Adding new paragraphs (c)(8), (d)(9), and (h)(3).

The additions and revisions read as follows:

§ 1.45D–1 New markets tax credit.

* * * * *

(c) * * *

(8) Non-real estate qualified equity investment.

(d) * * *

(1) * * *

(i) Investment in a qualified active low-income community business or a non-real estate qualified active low-income community business.

* * * * *

(9) Non-real estate qualified active low-income community business.

(i) Definition.

(ii) Payments of, or for, capital, equity or principal with respect to a non-real estate qualified active low-income community business.

(A) In general.

(B) Seventh year of the credit period.

(C) Amounts received from a certified Community Development Financial Institution.

* * * * *

(h) * * *

(3) Investments in non-real estate businesses.

* * * * *

(c) * * *

(1) * * *

(iii) The investment is designated for purposes of section 45D and this section as a qualified equity investment or a non-real estate qualified equity investment (as defined in paragraph (c)(8) of this section) by the CDE on its books and records using any reasonable method.

* * * * *

(3) * * *

(ii) *Exceptions.* Notwithstanding paragraph (c)(3)(i) of this section, an equity investment in an entity is eligible to be designated as a qualified equity investment or a non-real estate qualified

equity investment under paragraph (c)(1)(iii) of this section if—

* * * * *

(8) *Non-real estate qualified equity investment.* If a qualified equity investment is designated as a non-real estate qualified equity investment under paragraph (c)(1)(iii) of this section, then the qualified equity investment may only satisfy the substantially-all requirement under paragraph (c)(5) of this section if the CDE only makes qualified low-income community investments that are directly traceable to non-real estate qualified active low-income community businesses (as defined in paragraph (d)(9) of this section). The proceeds of a non-real estate qualified equity investment cannot be used for transactions involving a qualified active low-income community business that is not a non-real estate qualified active low-income community business.

(d) * * *

(1) * * *

(i) *Investment in a qualified active low-income community business or a non-real estate qualified active low-income community business.* Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in paragraph (d)(4) of this section) or any non-real estate qualified active low-income community business (as defined in paragraph (d)(9) of this section).

* * * * *

(9) *Non-real estate qualified active low-income community business*—(i) *Definition.* The term *non-real estate qualified active low-income community business* means any qualified active low-income community business (as defined in paragraph (d)(4) of this section) whose predominant business activity does not include the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate. For purposes of the preceding sentence, predominant business activity means a business activity that generates more than 50 percent of the business' gross income. The purpose of the capital or equity investment in, or loan to, the non-real estate qualified active low-income community business must not be connected to the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate.

(ii) *Payments of, or for, capital, equity or principal with respect to a non-real estate qualified active low-income community business*—(A) *In general.* For purposes of paragraph (d)(2)(i) of this section, a portion of the amounts received by a CDE in payment of, or for, capital, equity, or principal with respect to a non-real estate qualified active low-income community business after year one of the 7-year credit period (as defined by paragraph (c)(5)(i) of this section) may be reinvested by the CDE in a certified community development financial institution that is a CDE under section 45D(c)(2)(B) (certified CDFI) (as defined by 12 CFR 1805.201) and that is unrelated to the CDE (in accordance with section 267(b) or section 707(b)(1)). Any portion that the CDE chooses to reinvest in a certified CDFI must be reinvested by the CDE no later than 30 days from the date of receipt to be treated as continuously invested in a qualified low-income community investment for purposes of paragraph (d)(2)(i) of this section. If the amount reinvested in a certified CDFI exceeds the maximum aggregate portion of the non-real estate qualified equity investment, then the excess will not be treated as invested in a qualified low-income community investment. The maximum aggregate portion of the non-real estate qualified equity investment that may be reinvested into a certified CDFI, which will be treated as continuously invested in a qualified low-income community investment, may not exceed the following percentages of the non-real estate qualified equity investment in the following years:

(*1*) 15 percent in Year 2 of the 7-year credit period;

(*2*) 30 percent in Year 3 of the 7-year credit period;

(*3*) 50 percent in Year 4 of the 7-year credit period; and

(*4*) 85 percent in Year 5 and Year 6 of the 7-year credit period.

(B) *Seventh year of the credit period.* Amounts received by a CDE in payment of, or for, capital, equity, or principal with respect to a non-real estate qualified active low-income community business (as defined in paragraph (d)(9)(i) of this section) during the seventh year of the 7-year credit period do not have to be reinvested by the CDE in a qualified low-income community investment in order to be treated as continuously invested in a qualified low-income community investment.

(C) *Amounts received from a certified Community Development Financial Institution.* Except for the seventh year of the credit period under paragraph (d)(9)(ii)(B) of this section, amounts received from a certified CDFI must be reinvested by the CDE no later than 30 days from the date of receipt to be treated as continuously invested in a qualified low-income community investment.

* * * * *

(h) * * *

(3) *Investments in non-real estate businesses.* The rules in paragraphs (c)(8) and (d)(9) of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–13978 Filed 6–3–11; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–151687–10]

RIN 1545–BJ98

Withholding on Payments by Government Entities to Persons Providing Property or Services; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–151687–10) that was published in the **Federal Register** on Monday, May 9, 2011 (76 FR 26678). The proposed regulation provides guidance relating to withholding by government entities on payments to persons providing property or services.

FOR FURTHER INFORMATION CONTACT: A.G. Kelley, (202) 622–6040 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–151687–10) that is the subject of this correction is under section 3042(t) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–151687–10) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–151687–10), that was the subject of FR Doc. 2011–10758, is corrected as follows:

§ 31.3402(t)–1 [Corrected]

On Page 26679, column 2, under the paragraph heading **§ 31.3402(t)–1 Withholding requirement on certain payments made by government entities**, line 7 from the bottom of the paragraph, the language "a mere renewal of a contract. A material" is corrected to read "a mere renewal of a contract that does not otherwise materially affect the property or services to be provided under the contract, the terms of payment for the property or services under the contract, or the amount payable for the property or services under the contract. A material".

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–13928 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–9315–2]

Control of Emissions From New Highway Vehicles and Engines; Guidance on EPA's Certification Requirements for Heavy-Duty Diesel Engines Using Selective Catalytic Reduction Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments.

SUMMARY: EPA is requesting comment on draft guidance and related interpretations concerning the application of certain emission certification regulations to those on-highway heavy-duty diesel engines that are using selective catalytic reduction systems to meet Federal emission standards. EPA will review the comments and provide final guidance and interpretations in a future **Federal Register** document.

DATES: Any party may submit written comments by July 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0444, by one of the following methods:

- *On-line at http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2010–0444, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0444. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to "What Should I Consider as I Prepare My Comments for EPA?"

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Greg Orehowsky, Heavy-Duty and Nonroad Engine Group, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, (6405J), NW., Washington, DC 20460. Telephone number: 202–343–9292; Fax number: 202–343–2804; E-mail address: *Orehowsky.Gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose

This **Federal Register** document describes and seeks public comment on draft guidance for complying with adjustable parameter regulations at 40 CFR 86.094–22 as they apply to certification of on-highway heavy-duty diesel engines using selective catalytic reduction (SCR) technology to meet emission standards for oxides of nitrogen (NO_X). This draft guidance includes EPA's interpretation of relevant regulatory provisions in light of available information on current and developing approaches for effective SCR controls. After considering any public comments received, EPA will issue the guidance and interpretations in the **Federal Register**, and will use them in reviewing any application for certification application involving SCR received on or after the effective date of the guidance. The draft guidance contained in this document reflects the fact that manufacturers of heavy-duty engines and operators of trucks have gained significant experience in the design and use of SCR systems for these engines, and this experience should be reflected in the certification process. We invite public comment on the draft guidance and interpretations set forth below.

Until the effective date of the final guidance and interpretations, manufacturers should continue to refer to the regulations and the existing guidance documents noted below and to work with their certification representatives. We recognize that SCR technology will continue to mature, and we anticipate that appropriate designs

for heavy-duty diesel vehicles and heavy-duty diesel engines using SCR systems may continue to evolve as additional experience with the technology is gained.

This draft document provides specific examples of how we interpret existing certification regulations and how we intend to apply these regulations to heavy-duty diesel engines using SCR systems, based on the information available to us. These examples are not exclusive and are to be considered examples. Manufacturers remain able to present their own unique strategies that are not the same as the examples we are providing, and such strategies will remain subject to our review and approval under the certification regulations. Manufacturers must still show EPA that they meet all statutory and regulatory requirements when they apply for certification.

II. Overview

In promulgating the 0.20 gram per brake horsepower-hour NO_X standard for 2010 model year heavy-duty diesel engines, based on a specified regulatory test procedure, EPA recognized SCR technology as one potential approach for achieving the required emission reductions. EPA identified several issues for manufacturers to address in developing and applying SCR technology. Those issues related largely to the technology's use of a chemical reducing agent to reduce NO_X emissions. The reductant is generally in liquid form, which is referred to in this document as DEF ("diesel exhaust fluid"). DEF is stored in a tank located on the vehicle and is injected into the exhaust downstream of the engine. SCR technologies require drivers to refill DEF on a regular basis and are dependent on appropriately broad availability of DEF.[1] EPA regulations governing certification of engines generally require manufacturers to show that emission control technologies are adequately designed to limit adjustments that may increase emissions ("adjustable parameters," discussed in detail below). SCR is unique among emission controls in that it requires on-going driver interaction to ensure proper operation of the system.

To comply with the NO_X standard, most heavy-duty engine manufacturers developed SCR systems because of their high efficiency in reducing NO_X emissions. A relatively unsophisticated SCR system can achieve 60 percent reduction and a robust system can achieve greater than 80 percent reduction. This enables engine calibrations that increase fuel economy. Additionally, SCR technology has a relatively lower cost compared to NO_X adsorber technology.

In developing SCR systems, manufacturers consulted with EPA about how SCR systems could be designed and what other steps would be needed (*e.g.,* concerning DEF availability) to allow SCR to be used consistent with EPA regulations. Over a period of years, EPA has developed and refined guidance to address how manufacturers could effectively address issues related to compliance with the regulations for adjustable parameters. Manufacturers have addressed the adjustable parameter regulations by designing engines that employ warning systems for the driver and engine operation-related inducements for drivers to refill DEF tanks with proper DEF.

Manufacturers have also worked to increase DEF availability through infrastructure development. DEF infrastructure and sales volume have continued to grow since introduction of 2010 model year trucks equipped with SCR systems. Initially, DEF availability was concentrated around major truck routes, but has since increased in areas away from these locations. DEF is now available for sale in every state at truck stops and service facilities, and is available for delivery to fleet locations, as well. To assist drivers in finding DEF, multiple Internet-based DEF locator services have also been developed. Sales volumes of DEF are increasing significantly and are believed to correlate with the increased delivery and use of SCR equipped trucks. Increasing demand supported by sales volume should continue to drive the expanding infrastructure.

III. Relevant Regulatory Provisions

Under Section 203(a)(1) of the Clean Air Act, engines and/or vehicles must be certified as conforming with all applicable regulations before they may be introduced into commerce. Of particular relevance for on-highway heavy-duty diesel engines using SCR technology are the provisions that govern adjustable parameters at 40 CFR 86.094–22.[2] In particular, 40 CFR 86.094–22(e) authorizes EPA to determine those vehicle or engine parameters that will be subject to adjustment for emission testing purposes, and 40 CFR 86.094–22(e)(1) discusses how the Agency determines which parameters are subject to adjustment.

It is important for manufacturers to control the emissions performance of an engine or vehicle over the full range of any adjustable parameter in order to ensure that in-use operation is as good as projected at the time of certification. When emission-related parameters can be adjusted, there is a concern that the engine or vehicle can be operated at settings other than the manufacturer's recommended setting, possibly increasing emission levels.

If a parameter is subject to adjustment, the engine may be tested over any point in the range of adjustment and must meet the emissions standard through the range of adjustment. The Administrator determines the range of adjustment for emissions testing based on whether the means used to inhibit improper adjustment (*e.g.,* limits, stops, seals) are adequate. 40 CFR 86.094–22(e)(2) sets forth how EPA determines the adequacy of the limits, stops, seals or other means used to inhibit improper adjustment. For any parameter that is not adequately limited, 40 CFR 86.094–22(e) authorizes EPA to adjust the setting within the physical limits or stops during certification and other compliance testing. If a parameter is determined to be adequately inaccessible, sealed, or otherwise inhibited from adjustment, the vehicle will only be emission tested at the actual settings to which the parameter is adjusted during production. 40 CFR 86.094–22(e)(2)(i) and (ii) identifies certain types of parameters subject to adjustment, and identifies criteria related to technology, time, or expense for determining whether adjustment of the parameter is adequately limited. These provisions indicate that the technology used to limit adjustment, or the burden on the operator to make an adjustment (*e.g.,* more than one-half hour in time or more

[1] A Class 8 truck equipped with standard dual 150-gallon fuel tanks can travel approximately 3,600 miles between DEF tank refills, assuming a 20-gallon DEF tank and representative DEF dosing rate of 3 percent of fuel usage. DEF price varies depending on whether it is supplied via bulk container (commonly used by fleets and growing numbers of truck stops) or a 1 to 2.5-gallon jug. Current prices for bulk DEF at a truck stop are generally less than $3.00 per gallon and jug prices can be $4.00 or more per gallon.

[2] The regulatory provisions governing allowable maintenance at 40 CFR 86.004–25 and 40 CFR 86.094–25, and auxiliary emission control devices, or AECDs at 40 CFR 86.004–2, 40 CFR 86.082–2 and 40 CFR 86.004–16 are also relevant to certification of engines using SCR technology, but are outside the scope of this document. Manufacturers should continue to refer to existing guidance noted below covering these regulatory provisions.

than $20.00 in cost),[3] can be adequate to determine that the parameter is adequately limited and would not be treated as adjustable outside of the specified range for purposes of emissions testing for compliance with the standard. 40 CFR 86.094–22(e)(2)(iv) states that in determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of an adjustable parameter, EPA will consider the likelihood that settings other than the manufacturer's recommended setting will occur during in-use operation of the vehicle or engine, considering such factors as, but not limited to: (1) The difficulty and cost of getting access to make an adjustment, (2) the damage to the engine/vehicle if an attempt is made, (3) the effect of settings beyond the limits, stops, seals, or other means on engine performance characteristics other than emission characteristics, and (4) surveillance information from similar in-use vehicles or engines.

The emission control efficiency of an SCR system is highly dependent on the presence and quality of the reducing agent. Consequently, it is critical that a SCR-equipped vehicle be designed so that it is highly unlikely that the vehicle will be used without proper reducing agent. Given that most SCR system designs store the required DEF in a tank located on the vehicle and depend on the vehicle operator to refill the tank with DEF, EPA has indicated in previous guidance that manufacturers relying on SCR systems for emission control must incorporate engine design elements that make it highly unlikely the vehicle will operate for any substantial period without the appropriate DEF. In practice, this has meant designing engines or vehicles to alert operators of when the engine will run out of DEF, when the DEF is inadequate, or if the SCR system is not properly operating due to tampering or some malfunction. This has also meant designing engines or vehicles with features that motivate operators to ensure proper use of the SCR system, such as engine derates and vehicle speed inhibitors. Engine derates and vehicle speed inhibitors alter important vehicle performance characteristics, such as acceleration, maximum vehicle speed attainable, and ability to maintain speed under various loads, that are clearly noticeable to a driver.

[3] This cost is represented in terms of 1978 dollars. Adjusting for inflation, this would equate to roughly $70.00 in 2011 dollars.

IV. Prior Guidance

On March 27, 2007, EPA issued guidance regarding the certification of light-duty and heavy-duty motor vehicles and heavy-duty motor vehicle engines using SCR systems (CISD–07–07).[4] The purpose of the guidance was to discuss EPA's intended approach to certification of engines using SCR technologies and to facilitate manufacturer planning in advance of certification. EPA noted that several regulatory requirements are uniquely relevant to the certification and implementation of engines using SCR, specifically the regulatory provisions dealing with allowable maintenance and adjustable parameters. EPA suggested that an SCR system that requires the vehicle operator to replenish DEF periodically is potentially an adjustable parameter, and that unless operation of the vehicle without DEF was sufficiently inhibited through built-in performance deterioration or some similar system, vehicles using SCR could be treated as having an adjustable parameter range including no DEF in the tank and could not be certified if the vehicle would exceed emission standards without DEF in the tank. EPA provided guidance regarding how engines using SCR could be designed consistent with these regulatory provisions to allow for certification of such engines. EPA provided examples of possible sufficient inducements, including prohibiting operation if DEF is not present and having vehicle performance degraded in a manner that would be safe but onerous enough to discourage the user from operating the vehicle until the DEF tank was refilled. EPA also highlighted the need to assure that DEF would be available and accessible to operators and suggested places where DEF could be made available, such as dealerships and truck stops. We recognized that SCR technology was evolving and that our guidance also might need to evolve.

On February 18, 2009, EPA issued additional guidance (CISD–09–04) to supplement CISD–07–07.[5] This guidance provided additional details regarding certification of heavy-duty engines with SCR systems. Particularly, it outlined design elements that would make it highly likely operators would replenish DEF prior to the tank being empty and operators would not tamper with SCR systems. The guidance provided specific examples of robust driver warnings and inducements to help ensure operators addressed conditions such as low reductant level, improper reductant quality, and tampered system components. EPA continued to note the potential need for additional guidance or changes in our approach for SCR certification.

On December 30, 2009, EPA revised CISD–09–04.[6] The intent of this revision was to clarify that CISD–09–04 was guidance and did not set forth binding requirements. EPA revised the guidance and made clear that manufacturers wishing to certify engines using SCR technology should consult the revised guidance document as well as the guidance provided in CISD–07–07. EPA also reminded manufacturers that they should work with their certification representatives to provide EPA adequate descriptions of the strategies that are incorporated in their SCR systems in order to demonstrate compliance with EPA's certification requirements as set forth in 40 CFR Part 86.

EPA has continued to monitor the development of SCR technology and its effectiveness in achieving emission control in use. On July 20, 2010, in conjunction with the California Air Resources Board (CARB), we conducted a public workshop to review existing guidance and policies regarding design and operation of SCR-equipped heavy-duty diesel engines.[7] In particular, EPA reviewed approaches to designing SCR-equipped engines to monitor and induce appropriate responses to insufficient or improper DEF, as well as strategies regarding SCR systems that are tampered with or defective. EPA developed a strawman proposal regarding future certification of heavy-duty diesel engines equipped with SCR technology,[8] and opened a docket to allow public comment regarding these issues.[9] As part of the strawman, EPA included approaches for engines

[4] U.S. Environmental Protection Agency, Dear Manufacturer Letter regarding "Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalytic Reduction (SCR) Technologies," March 27, 2007, reference number CISD–07–07 (LDV/LDT/MDT/HDV/HDE), *available at http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=16677&flag=1.*

[5] *See* docket number EPA–HQ–OAR–2010–0444–0018.

[6] U.S. Environmental Protection Agency, Dear Manufacturer Letter regarding "Revised Guidance for Certification of Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies," December 30, 2009, reference number CISD–09–04 (HDDE), *available at http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=20532&flag=1.*

[7] *See* 75 FR 39251 (July 8, 2010).

[8] *See* docket number EPA–HQ–OAR–2010–0444–0016. The strawman proposal was not final guidance.

[9] *See* 75 FR 39251 (July 8, 2010). Public comments received in response to the public workshop are available in EPA's docket EPA–HQ–OAR–2010–0444, *available at http://www.regulations.gov.*

equipped with SCR, including designs that monitor on-board DEF supply and induce action to avoid low DEF supply and operation with no DEF (or an insufficient amount to allow proper dosing). EPA also discussed detection of poor quality DEF, as well as warnings and inducements if poor quality DEF is detected. In addition, EPA discussed designs for engines equipped with SCR systems to sufficiently reduce the likelihood that SCR system operation would be circumvented. EPA cautioned manufacturers to review any element of design that could be tampered with and prevent proper operation of the SCR system. Lastly, EPA noted DEF freeze protection and infrastructure requirements, and requirements regarding unregulated pollutants.

V. Experience to Date

A. EPA's Certification Program

For the 2010 and 2011 model years, EPA has certified a total of 71 on-highway heavy-duty diesel engine families with SCR systems produced by 11 engine manufacturers. As part of the certification process, engine manufacturers are required to disclose various aspects of the SCR system designs, including elements of their system that may be adjustable parameters. To date, manufacturers' designs have employed driver warnings and inducements for low reductant level, poor reductant quality, and tampered or malfunctioning SCR systems.

In order to ensure adequate availability of DEF for use with manufacturers' engines, at the time of certification EPA reviews manufacturers' plans for DEF availability and accessibility. EPA expects manufacturers to have DEF available at their dealerships, to encourage DEF availability at third-party locations, and to have an emergency backup plan in case DEF is not readily available.

When manufacturers implement new emission controls, the engine technology generally evolves and the manufacturers make improvements over the course of initial model years as they develop and certify engines and vehicles for each new model year. The process of certification involves interaction between manufacturers and EPA technical staff about the nature and effectiveness of emission controls and often results in manufacturers modifying emission control strategies based on feedback from EPA. In the case of SCR technology, manufacturers have certified only a few model years of engines that incorporate SCR technology, and EPA has seen maturing approaches to implementing the technology. For example, from the 2010 to 2011 model years manufacturers improved or developed new engine/vehicle diagnostic software that provides more or better driver warnings and inducements related to the SCR system. Similarly, manufacturers are also evaluating various sensors that are expected to reduce the amount of time necessary to detect poor quality DEF in future model years. As with other new engine technologies, defects in the operation of SCR system strategies (*e.g.,* driver inducements) are sometimes discovered in the field, and manufacturers initiate campaigns to fix the issues and incorporate these fixes in current and new model year production engines.

B. California Air Resources Board SCR Field Evaluation

The California Air Resources Board (CARB) recently conducted field investigations within the State of California to evaluate implementation of SCR technology for 2010 model year vehicles.[10] The investigations included: (1) A survey of DEF availability, (2) a survey to determine whether drivers are using DEF or have tampered with SCR components, (3) an evaluation of SCR driver inducements, and (4) an evaluation of the potential emissions impact of improper SCR operation.

CARB conducted surveys of DEF availability in March 2010 and August 2010. Both surveys indicated that DEF is readily available at major diesel truck stop refueling stations along major interstate highways in California. In the first survey DEF was determined to be available at 85 percent of refueling stations, and in the second survey DEF was determined to be available at 92 percent of refueling stations. In addition, both surveys indicated that 30 percent of retailers that normally supply parts for heavy-duty vehicles have DEF available. CARB noted that as older engines are retired and an increasing number of SCR-equipped engines enter into operation, the availability of DEF should increase with demand. It concluded that DEF is currently being offered in adequate supply for the relatively limited number of vehicles using SCR.

In September 2010, CARB conducted random inspections of 69 trucks equipped with 2010 model year engines to determine whether DEF was being used, whether the DEF was of appropriate quality, and whether driver warning indicators (*i.e.,* warning lights, messages, or audible alarms) were present. CARB found that all trucks were using DEF and that the DEF was of appropriate quality. No DEF-related warning indicators were active and there was no evidence of tampering with SCR system components. Additionally, CARB solicited information from drivers about their experience with locating DEF. Sixty drivers indicated that they encountered no problem locating DEF, while nine indicated they had minor problems locating DEF in California or in other states. For those encountering problems, the issue was limited to not being able to purchase DEF at a particular refueling station and instead having to purchase it at a different refueling station. Sixty-eight drivers stated that they never ran out of DEF while operating their vehicles and only one driver indicated that he drove for only 10 miles with an empty DEF tank as indicated by the driver's gauge.

In the second half of 2010, CARB conducted an evaluation of SCR inducements on three trucks equipped with 2010 model year engines and SCR systems. The trucks evaluated were a Freightliner Cascadia equipped with a 12.8-liter Detroit Diesel DD13 engine (Test Vehicle 1), a Kenworth T800 equipped with a 14.9-liter Cummins ISX engine (Test Vehicle 2), and a Dodge 5500 equipped with a 6.7-liter Cummins ISB engine (Test Vehicle 3). Each truck was operated under various test conditions to observe the operation of driver inducements and their effectiveness in compelling the driver to take a particular course of action. The conditions under which the trucks were operated included: (1) Operation until the DEF tank was depleted, (2) operation with water in the reductant tank instead of DEF, and (3) operation with a disabled DEF system. CARB staff referenced the vehicle owner's manuals and the February 2009 EPA guidance to ascertain the expected driver warning indicators and inducement strategies that were expected in each condition.

On Test Vehicle 1, the warnings and inducements were implemented as expected. CARB deemed the warnings effective in drawing the driver's attention to the need for SCR-related service. The initial inducement incorporated in Test Vehicle 1 was a 25 percent engine torque derate and a 55 mph speed limitation. CARB concluded that driving the truck with these inducements was neither acceptable nor tolerable, especially when trying to accelerate or driving up-hill, and would

[10] California Air Resources Board, Report regarding "Heavy-Duty Vehicle Selective Catalytic Reduction Technology Field Evaluation," May 2011, *available at http://www.arb.ca.gov/msprog/cihd/cihd.htm.*

likely cause a driver to refill with DEF or correct the SCR problem as needed. If the initial inducement were ignored, the severe inducement incorporated in Test Vehicle 1 was a 5 mph speed limitation, which worked as designed. The only way to resume normal operation after the severe inducement was to have the vehicle serviced by draining the water out of the system, filling the reductant tank with DEF, and having the system reset by an authorized service technician. CARB determined that the inducements were effective for this vehicle because the constant inducement strategies and risk of costly repairs would not be worth the downtime and financial loss to the business when DEF could simply have been added to ensure proper vehicle operation.

On Test Vehicles 2 and 3, the warnings and some inducements were implemented as expected, but certain inducements were not. Test Vehicle 2 implemented the initial inducement (25 percent engine torque derate) in response to DEF depletion, DEF contamination, and DEF tampering conditions, but failed to implement the severe inducement (5 mph speed limitation) in response to any of these conditions. Test Vehicle 3 incorporates an engine no-restart severe inducement after a 500-mile to no-restart countdown. After the 500-mile countdown reaches zero and a safe harbor event (key-off) is experienced, the truck should not restart. The inducement worked as expected in response to DEF contamination and DEF tampering conditions. In response to the DEF depletion condition, Test Vehicle 3 started the 500-mile to no-restart countdown as expected. However, after the countdown reached zero and the truck was shut off, the truck successfully started the next day and reset the countdown. On a subsequent restart attempt after the countdown reached zero, the truck successfully implemented the no-restart condition.

CARB contacted Cummins, the engine manufacturer for Test Vehicles 2 and 3, about the failures. Cummins was aware of and addressing the issues underlying the failures. In the case of Test Vehicle 2, Cummins in the second quarter of 2010 had implemented a correction on their engine production line and in the third quarter of 2010 had begun a voluntary recall of the engine family to correct the problem.[11] Similarly, in the case of Test Vehicle 3, Cummins was aware of a DEF heater malfunction that contributed to the final inducement not initiating as expected and was already addressing the issue. CARB concluded that for both Test Vehicles 2 and 3, the warnings were deemed effective in drawing the driver's attention to the need for SCR-related service. CARB also concluded that the inducements on Test Vehicle 2 were difficult to objectively assess due to a malfunctioning throttle position sensor that was encountered during the testing. CARB concluded that the inducements on Test Vehicle 3 were effective once the DEF heater malfunction was corrected.

C. American Trucking Associations Survey

In 2010, the American Trucking Associations (ATA) through its technical advisory group conducted a survey of 12 trucking fleets operating across the United States regarding their experience operating trucks with SCR-equipped engines.[12] The surveyed fleets are some of the largest in the country and operate an approximate total of 2,000 SCR-equipped trucks. The fleet owners indicated that they would probably purchase approximately 5,900 SCR-equipped trucks in 2011.

None of the surveyed fleets reported any problems locating DEF and none reported an engine derate, vehicle speed limitation, or no-restart event caused by operation with an empty DEF tank. Similarly, no fleet reported issues with the quality of DEF. There were six reported instances of an engine derate resulting from circumstances other than an empty DEF tank. Two of these instances were caused by malfunctioning sensors and four were caused by melted DEF supply hoses. None of these instances were associated with the behavior of the operator. Survey respondents also reported a total of five instances of NO_X sensor malfunctions, none of which were related to driver tampering.[13] ATA's fleet survey indicates that drivers do not favor inducements involving an engine power derate, especially if it occurs while a truck under heavy load is driving up-hill.

D. Cummins Survey

In 2010, Cummins collected information from 47 different customer-owned vehicles that were equipped with Cummins 11.9-liter and 15-liter engines using SCR.[14] The vehicles were equipped with data-loggers that wirelessly transmit data to Cummins periodically on the operation of those vehicles. At the time the data was gathered, the vehicles had accumulated a total of more than 2.4 million miles of operation across the United States. For approximately 99.7 percent of the operating miles of the surveyed vehicles, the DEF level was above 10 percent of tank capacity. For the remainder of vehicle operation:

- DEF level was between 5 and 10 percent of tank capacity for less than 0.13 percent of the operating miles (*i.e.,* approximately 3,000 miles).
- DEF level was between 2.5 and 5 percent of tank capacity for less than 0.03 percent of the operating miles (*i.e.,* approximately 740 miles).
- DEF level was between zero and 2.5 percent of tank capacity (a condition at which engines experienced derated performance) for less than 0.04 percent of the operating miles (*i.e.,* approximately 920 miles).
- DEF level was at zero percent of tank capacity (a condition at which engines experienced derated performance) for less than 0.02 percent of the operating miles (*i.e.,* approximately 520 miles).

In addition, DEF quality was unacceptable (*i.e.,* a faulted condition existed) for less than 0.18 percent of the operating miles (*i.e.,* approximately 4,400 miles).

E. Navistar EnSIGHT Report

In 2010, Navistar retained EnSIGHT, Inc. to test three 2010 model year SCR-equipped trucks to analyze inducements provided for in EPA certification guidance.[15] The following three trucks were tested: (1) One Freightliner Cascadia with a 15-liter Detroit Diesel engine, (2) one Kenworth T–660 with a 15-liter Cummins ISX 15 435B engine, and (3) one Dodge Ram 5500 crew cab flatbed with a 6.7-liter Cummins ISB 6.7 305 engine. As part of testing, the three trucks were operated with the intent of circumventing the manufacturer-designed inducements, which is in contravention to EPA tampering regulations.[16]

[11] Voluntary recalls are a typical method for manufacturers to remedy emission-related problems they discover. Manufacturers are required to report voluntary emission recalls to EPA and ARB, and Cummins did so in this case.

[12] *See* docket number EPA–HQ–OAR–2010–0444–0019.

[13] When a manufacturer determines that an emission-related defect exists in 25 or more engines of the same class or category and model year, they are required to file an Emission Defect Information Report in accordance with 40 CFR 85.1901 *et seq.*

[14] *See* docket number EPA–HQ–OAR–2010–0444–0020.

[15] *See* docket number EPA–HQ–OAR–2010–0444–0015 for the August 2010 report. Navistar provided EPA with supplemental details on the August 2010 report in a follow-up October 2010 report. See docket number EPA–HQ–OAR–2010–0444–0022 for the October 2010 report.

[16] Section 203(a)(3) prohibits tampering with emission controls. Such actions are illegal, unless conducted as part of a testing program covered by an Agency-issued testing exemption.

Based on their testing program, EnSIGHT reported the following:

• All trucks physically could be operated for extended periods under an initial inducement. Provided the driver took particular actions, final inducements could be avoided indefinitely. For example, the Freightliner Cascadia was driven over 1,000 miles on an empty DEF tank at a limited speed of 55 mph, which is the initial inducement. As long as no more than 30 percent of the fuel tank capacity (approximately 100 gallons) was added at any single refueling event, the final inducement, a 5 mph vehicle speed limitation was not triggered. The Kenworth T–660 was driven with an empty DEF tank and a 25 percent engine torque derate, which is the initial inducement. As long as the engine was not shut off for more than a few minutes at a time, the 5 mph vehicle speed limitation final inducement was not triggered.

• When DEF tanks were empty and water was added instead of DEF, two trucks were able to run indefinitely. When the Dodge 5500 was low on DEF and began its 500-mile to final inducement (*i.e.,* no-restart condition) countdown, the driver was able to fill the DEF tank with water, start the truck, and drive normally. This action cleared the 500-mile countdown and the driver display indicated a full DEF tank. On one test run, the truck displayed visual and audible warning signals after 73 miles of driving with water in the DEF tank and eventually displayed the 500-mile to no-restart countdown after 694 miles of driving. Upon shutting off the truck after a total of 1,278 miles of driving, a no-restart condition was encountered. On a subsequent test run with water in the DEF tank, the truck was driven over 4,000 miles and encountered no warning signals or inducements. The Freightliner Cascadia was driven over 15,000 miles with only water in its DEF tank and triggered no initial or final inducement.

• SCR system components could be repeatedly disconnected and reconnected to avoid particular inducements. On the Dodge 5500, the driver was able to disconnect the injector electrical connector, which would initiate a 500-mile to final inducement (*i.e.,* no-restart condition) countdown. As the mileage countdown continued, the driver could reconnect the component and reset the 500-mile countdown. On the Freightliner Cascadia, when electrical connections to the DEF injector, gauge, or tank pump were unplugged, the truck was driven for over 1,000 miles prior to triggering an inducement.

• Although the testing program was designed to intentionally operate the trucks until final inducements were encountered, EnSIGHT also provided an assessment of the impact of initial inducements on driver behavior. They concluded that a 25 percent engine torque derate would not induce a corrective response by the drivers, including when the truck was fully loaded. With this level of derate, EnSIGHT's drivers were able to operate the Freightliner Cascadia and the Kenworth T–660 at speeds up to 55 mph and 65 mph, respectively. Of the Kenworth T–660, EnSIGHT's drivers indicated that the truck could easily be operated and was acceptable for typical driving for long periods of time under derate.

F. DEF Infrastructure and DEF Quality

The DEF infrastructure and sales volume have continued to grow since introduction of 2010 model year trucks equipped with SCR systems. Initially, DEF availability was concentrated around major truck stops and truck routes and 2.5-gallon jugs represented the common mode of supply. Although very limited, bulk DEF dispensing typically utilized small storage tanks located apart from the fuel islands at truck stops. The refilling of fuel and DEF tanks at truck stops was also more likely to require two separate purchase transactions.

The continually increasing DEF infrastructure and sales volume have resulted in improved DEF availability along major truck routes as well as other locations. "AdBlue and DEF Monitor," a publication of Integer Research, reports that DEF is available for sale in jug form in every state.[17] Integer Research also reports that DEF is available for delivery to fleet locations in every state, as well. To assist drivers in finding DEF, multiple Internet-based DEF locator services have been developed. One of these services, DiscoverDEF.com, run by Integer Research, recently announced that DEF consumption in the U.S. reached 2.3 million gallons per month in December 2010 and that in August of the same year consumption volumes increased 43% compared to the previous month. Also, a number of suppliers reported sales volumes doubling in September 2010 alone. These increases in DEF consumption are believed to correlate with the increased delivery and use of SCR-equipped trucks.

Increasing demand supported by sales volume helps drive the continuing expansion of DEF infrastructure. The same locator service recently reported that more than 100 truck stops in the U.S. and Canada now have DEF available at the pump. Additionally, this service maintains a list of over 3,000 locations that have packaged DEF, and a majority of the locations are in the U.S. As truck stops such as Travel Centers of America roll out on-island DEF dispensers, they usually incorporate technology which allows for single transaction fuel and DEF filling, which makes buying DEF quicker, more efficient, and customer-friendly. On-island DEF dispensing typically requires truck stops to utilize a mini-bulk system with at least 800-gallon above ground storage tanks or even larger underground storage tanks. The transition to larger tanks supports bulk purchases as well as cheaper end-user prices for DEF. This information is consistent with the survey information discussed above.

Regarding DEF quality, ISO 22241–1 sets forth generally accepted industry-wide quality specifications for DEF that were developed by vehicle manufacturers and other affected stakeholders. The American Petroleum Institute (API) Diesel Exhaust Fluid Certification Program (*http://www.apidef.org*) is a DEF quality licensing program intended to ensure that DEF of known specifications and quality is available. We understand that more than 20 of the largest producers of DEF are participating in the Certification Program and that the associated DEF Aftermarket Audit Program has also begun. In 2010, API tested all licensed products and the vast majority of those products met the ISO 22241–1 specifications. Where deficiencies were found, API and DEF manufacturers are working to identify the cause and helping to ensure that future batches conform to the ISO specifications. Because of API's Audit Program and its responsiveness to failed test results, we believe good quality DEF is broadly and generally available. API's Certification and Audit Programs were developed under the SCR Stakeholder Group, an informal consortium of vehicle/engine manufacturers, urea manufacturers, DEF blenders and distributors, and associated technology companies. EPA has been an active participant in the Stakeholder Group for several years. We also understand that the Petroleum Equipment Institute, its members, and associated stakeholders have developed Recommended Practices for the Storage and Dispensing of Diesel Exhaust Fluid (DEF), which will provide useful advice to any party

[17] *See* docket number EPA–HQ–OAR–2010–0444–0021.

who stores and dispenses DEF. Given that the vast majority of DEF production is accounted for in API's certification program and that the follow-up audit program is showing high rates of conformance to the ISO specifications, we believe these programs will be adequate to ensure DEF quality.

VI. Reasons for Revised Guidance

Considering the developments in SCR-related technologies, DEF infrastructure, and the other available information described above, we believe it is appropriate to further refine our guidance to manufacturers regarding certification of SCR-equipped engines to be compliant with applicable regulations. As discussed in this section of the document, on-highway heavy-duty diesel SCR systems introduced into commerce to date have been highly successful in inducing operators to refill DEF tanks on a timely basis and to avoid interfering with SCR operation, with a few specific exceptions.[18] At the same time, the Agency believes it is appropriate to refine its guidance, particularly as experience is gained with SCR in-use and as technology advances. We seek comment on the draft guidance and interpretations presented here and plan to incorporate what more we learn in the next version of the guidance to be issued later this year.

A. Current SCR Systems Are Highly Effective in Use

As trucks equipped with SCR systems have been introduced into U.S. commerce, drivers have become familiar with this technology. Current information concerning in use operation of SCR-equipped trucks, including all of the studies and other information discussed above, indicates that warning signals work correctly and that drivers do not wait for SCR-related inducements to be triggered to ensure appropriate and continuing operation of the systems. Specifically, the overwhelming majority of drivers surveyed by CARB, ATA, and Cummins did not wait for activation of warning indicators prior to refilling their DEF tanks and, where warnings did occur, generally did not drive distances long enough to lead to activation of inducements. Further, as the infrastructure for making DEF available becomes even more widespread, drivers will have increased and more convenient access to DEF when they need it. As documented in part by CARB's survey, there are currently few availability issues and those appear to stem primarily from limited situations where DEF was not found at the first location at which it was sought. As DEF infrastructure and supply continue to expand, EPA also expects the price of DEF to decrease, in part because of the move to bulk dispensing that is already underway. In addition, EPA expects that the DEF quality assurance programs described above will make it increasingly easy for drivers to find DEF which meets the specifications necessary for proper operation of the SCR systems. The strong indication from all of this evidence is that DEF warning systems are working correctly, and that when warned, drivers have not continued to drive distances long enough to lead to inducements. Inducements appear to be triggered in very few cases.

Navistar's study and CARB's field evaluation provide some evidence indicating that in some cases there have been issues related to SCR-equipped engines and assurance of their proper operation. Navistar's study identifies specific problems associated with the design or manufacture of certain SCR-equipped engines, and outlines the intentional actions taken by drivers employed by Navistar's contractor in conducting the study. The study's findings are properly considered in the context of all the available information on SCR operation. In light of the investigations and surveys conducted by CARB, ATA, and Cummins, EPA does not believe Navistar's findings reflect the overall efficacy of SCR systems on heavy-duty diesel engines currently in operation or the way they are actually used.

Most of Navistar's findings resulted from actions by the contractor's drivers to intentionally circumvent the manufacturer-designed inducements of the three test vehicles. For example, drivers avoided triggering inducements associated with an empty DEF tank by limiting refueling quantities or keeping the truck running when it normally would be turned off. Both ways of circumventing the inducements exact their own costs on drivers in terms of time, convenience, and expense. To illustrate, never refilling above about 30% of the tank leads to approximately three times as many refueling events, and the time and expense associated with this kind of disruption detract from the efficient operation of truck operators, who work in a competitive business. Navistar's contract drivers also disconnected and reconnected various SCR system components as a means of avoiding DEF inducements. Such intentional actions would be considered tampering and are illegal.[19] While it is possible that drivers could intentionally take such actions to circumvent inducements, manner of truck operation conducted in the Navistar study is clearly not representative of the vast majority of truck operation, as indicated by the CARB and ATA surveys. We do not think that the marginal cost and effort involved in purchasing DEF provide sufficient motivation for a driver to follow such inconvenient and risky courses of action.

We also do not agree with Navistar's view that initial inducements are ineffective to produce corrective responses by drivers. ATA's fleet survey indicates that drivers do not favor inducements involving an engine power derate, especially if it occurs while a truck under heavy load is driving up-hill. Thus, drivers are likely to maintain proper SCR operation to avoid encountering these inducements. CARB's investigation shows that most inducements functioned properly during expected truck operating conditions and their assessment of the effectiveness of initial inducements was contrary to Navistar's findings. CARB determined that the inducements were effective because operating in a way that avoids the inducement strategies and raise the risk of costly repairs would not be worth the downtime and potential financial loss to business. In fact, Cummins' survey, which included some of the same 15-liter engines in Navistar's study, found that surveyed trucks operated with DEF in their tanks for greater than 99.9 percent of their total operation. Cummins' survey also found that trucks operated with unacceptable DEF quality for less than 0.18 percent of their total operation. This strongly indicates that the inducements have the intended effect of motivating appropriate driver behavior.

The report of Navistar's study found that some manufacturers' designs did not adequately detect water in the urea tank and thus did not prevent the driver from refilling the tank with something other than DEF. Navistar and CARB findings on DEF quality detection were not consistent in all cases. For example, Navistar found that initial and final inducements for the Freightliner Cascadia equipped with the 12.8-liter Detroit Diesel DD13 engine were not triggered when the DEF tank was filled with water. During CARB's field investigation, both the initial and final inducements were implemented for Test

[18] It is worth noting again in this context that under Section 203(a)(3) of the Clean Air Act, tampering with SCR systems or other emission controls is prohibited.

[19] Such actions are illegal, unless conducted as part of a testing program covered by an Agency-issued testing exemption.

Vehicle 1 as expected when the DEF tank was filled with water. CARB's investigation discovered various production defects for Test Vehicles 2 and 3 that prevented the systems from working fully (as designed, the systems appeared to have sufficient capabilities to detect and respond to DEF quality problems). CARB followed up with Cummins and learned that the manufacturer was aware of the performance problems and addressing them in a manner consistent with regulatory provisions governing defect reporting and repair.[20] The defect reports submitted by Cummins corroborated that the manufacturer was appropriately responding to the problems. Additionally, Detroit Diesel informed EPA that they knew of problems with their system and had developed an updated software calibration to fix them as early as June 2010, prior to Navistar reporting the results of their study. Detroit Diesel has since begun addressing the problems on in use trucks consistent with regulatory provisions governing defect reporting and repair. As noted above, the problems with detecting water in the urea tank appear to be related to defects in production of these engines, as opposed to deficient designs. These production defects are being addressed in the same manner that problems with new technology are addressed under EPA's regulations.

B. Regulations Should Be Applied in Light of Continuing Information and Process Improvements

EPA's regulatory provisions for adjustable parameters are intended to ensure that manufacturers design their emissions control system in a way that makes it unlikely that they will be operated inappropriately. It appears that manufacturer's past SCR designs and EPA's guidance have resulted in highly effective controls to protect the operation of SCR systems, as evidenced by the surveys and other data which show that drivers are properly operating their SCR-equipped trucks. There have been indications of specific problems with some engines in-use, and the manufactures involved have been addressing them through production and other improvements as the problems are identified. We believe it is appropriate to evaluate the experience gained to date and to make continuing, appropriate adjustments to our certification process for SCR-equipped engines as technology evolves and in-use experience is gained. EPA recognizes that development of even more robust sensors and inducements does not negate past approaches implemented pursuant to existing regulations. Rather, continual improvement is expected given the mounting experience with, and the maturing of, SCR technology, and the greater availability of DEF. As improved strategies and capabilities for proper SCR operation become feasible, EPA may guide their application to provide even further assurance that the technology is operating as intended on SCR-equipped engines.

C. As SCR Technology Matures, Further Guidance Is Appropriate

Several developments in SCR technology allow continuing refinement in SCR design. One area of potential improvement in design involves sensors that can detect poor quality DEF. Current SCR system designs incorporate NO_X sensors to determine catalyst efficiency and detect catalyst malfunction. Since the sensors are part of the system design, they have also been used to detect poor quality DEF through correlation of NO_X emission rates with various concentrations of urea. Urea quality sensors have been identified as a means to help improve detection capabilities for poor quality urea. They directly measure quality and appear likely to represent a quick detection method for addressing quality concerns. Manufacturers are currently evaluating the performance and durability of various sensor designs.

Since the 2010 model year, manufacturers have also been refining their engine/vehicle system diagnostics software to incorporate additional capabilities for implementing SCR-related inducements. For example, many manufacturers today have developed multiple triggers for triggering inducements, including detection of refueling, extended idling, and engine shutdown events. Incorporation of additional inducement triggers into designs further decreases the likelihood of improper operation of the SCR system. Manufacturers are also improving their diagnostics software to ensure that SCR-related inducements cannot be reset or erased by diagnostic scan tools available to the general public or by disconnecting components in the field.

Many manufacturers are implementing improved designs in their 2011 model year engines/trucks that may be sold in the State of California. After the July 2010 public workshop, CARB and EPA began encouraging manufacturers to adopt the elements of design that were discussed. In order to avoid the need for multiple engine/vehicle production designs, manufacturers have often incorporated the design elements of vehicles sold in California into their 49-state vehicles.

Improving sensor capabilities and inducement strategies should present low risk and little burden for both manufacturers and drivers. Manufacturers are already in the process of improving their SCR designs, and overwhelmingly drivers are not waiting for SCR-related warnings or inducements to be triggered before they refill DEF tanks and otherwise maintain proper operation of SCR systems. Given the importance of reducing NO_X emissions from heavy-duty diesel engines for attaining and maintaining national air quality standards, we have developed the following draft revised guidance to reflect improving capabilities for designing SCR systems to ensure proper operation.

VII. SCR Adjustable Parameter Design Criteria

This section discusses design criteria for on-highway heavy-duty diesel vehicles or engines using SCR technology. EPA believes that vehicles and engines that meet these design criteria would meet the requirements of the regulations regarding adjustable parameters. EPA will still review each certification application to ensure that the regulatory provisions are met. Likewise, in the case of design criteria that are not fully specified in this guidance, EPA will review the application to ensure that the engine design meets the regulatory requirements. EPA may review and revise this guidance as the technology continues to mature and as EPA receives more information regarding the use of SCR systems. In addition, manufacturers may present other designs for EPA consideration. All designs will remain subject to EPA approval under the existing certification regulations.

As noted above, in determining the adequacy of an engine's means of inhibiting adjustment of a parameter, EPA considers the likelihood that settings other than the manufacturer's recommended setting will occur in use. With this in mind, EPA is providing these draft SCR adjustable parameter design criteria based on our view that an SCR-equipped vehicle that complies with these criteria will be adequately inhibited from use when the SCR system is not operating properly.

EPA is asking for comments on the draft guidance discussed below. The design criteria are divided into four categories. The categories are:

A. Reductant tank level driver warning system.

[20] *See* 40 CFR Part 85, Subpart T.

B. Reductant tank level driver inducement.

C. Identification and correction of incorrect reducing agent.

D. Tamper resistant design.

A. Reductant Tank Level Warning System

The emissions performance of SCR-equipped vehicles depends on having an adequate supply of appropriate quality reducing agent in the system. SCR systems require regular user interaction to ensure that the system is operating properly. Therefore, it is critical that the operator both know when reducing agent is needed and have enough time to replace it before it runs out. A properly designed driver warning system should address these concerns.

To achieve this design goal, under our criteria, the manufacturers would use a warning system including the following features:

1. The warning system should incorporate visual and possibly audible alarms informing the vehicle operator that reductant level is low and must soon be replenished. The manufacturer should design the warning system to activate well in advance of the reducing agent running out so that the operator is expected to have one or more refueling opportunities to refill the reductant tank before it is empty.

2. The warning alarm(s) should escalate in intensity as the reducing agent level approaches empty, culminating in driver notification that is difficult to ignore, and cannot be turned off without replenishment of the reducing agent.

3. To provide adequate notice, the visual alarm should, at a minimum, consist of a DEF level indicator, a unique light, reducing agent indicator symbol or message indicating low reducing agent level. The warning light, symbol or message should be different from the "check engine" or "service engine soon" lights used by the On Board Diagnostic (OBD) system or other indicators that maintenance is required. The symbol or message used as the warning indicator should unmistakably indicate to the vehicle operator that the reducing agent level is low. The reducing agent indicator symbol shown below has been generally accepted in the industry and EPA considers it acceptable as an indicator of low reducing agent level.

4. The light, indicator symbol or message should be located on the dashboard or in a vehicle message center. The warning light or message does not initially have to be continuously activated, but as the reducing agent level approaches empty the illumination of the light or message would escalate, culminating with the light being continuously illuminated or the message continuously broadcast in the message center. Many current designs have been found acceptable and EPA does not anticipate requiring changes in the foreseeable future. Unique SCR system warning lights and message designs that deviate from previously approved designs or the design criteria outlined above would need to be approved by EPA.

Manufacturers may also incorporate an audible component of the low DEF warning system. As the reducing agent level approaches empty the audible warning system should escalate.

B. Low Reductant Level Inducement

The warning systems discussed above can play a critical role in achieving vehicle compliance. As noted, a well designed warning system should deter drivers from operating SCR-equipped vehicles without reducing agent. However, we believe an additional, stronger deterrent is necessary and appropriate. Therefore, at some point after the operator receives the initial signal warning that reductant level is low, it is important that the engine design incorporates measures to induce users to replenish the reducing agent.

Under these design criteria, manufacturers would design their engines with a final inducement system that accomplishes the following when the reductant tank is empty or the SCR system is incapable of proper dosing:

1. Maximum vehicle speed is decreased at the quickest safe rate to 5 miles per hour while the vehicle is operating; or

2. The maximum engine fueling and engine speed are decreased at the quickest safe rate while the vehicle is operating, resulting in engine shutdown or limiting operation capability to idle only.

Some manufacturers prefer to trigger the above final inducement only when the vehicle has stopped at a safe location. Under this approach, a vehicle may be assumed to be in a safe location if the engine is purposefully shut off (key turned to the off position), has experienced an extended idle of 60 minutes (as indicated by zero vehicle speed for 60 minutes), or a refueling event has occurred (meaning a volume of fuel has been added equal to or greater than 15 percent of vehicle operating fuel capacity).

If a manufacturer chooses to implement final inducement only when the vehicle is stopped, we believe the engine will need to be designed with the following additional characteristics:

a. Be able to trigger final inducement when the vehicle is stopped at a safe location. The final inducement will consist of limiting the vehicle speed to 5 mph, shutting the engine down, or limiting engine operation to idle only.

b. Prior to triggering final inducement, be able to impose a severe inducement which makes prolonged operation of the vehicle unacceptable to the driver and compels the driver to replenish the reducing agent prior to the SCR system becoming incapable of proper dosing. The severe inducement will consist of an engine derate, a vehicle speed limitation, or a limitation on the number of engine restarts. For example, an engine torque derate of 40 percent may be utilized as a severe inducement for the operator of a Class 8 line-haul truck to replenish the reducing agent. The severe inducement should occur while there is enough reductant in the tank to continue to provide proper SCR dosing for approximately one full day of vehicle operation. For example, it may be appropriate to initiate severe inducement with a 10 percent reserve of reducing agent in the reductant tank.

c. Be able to determine when the vehicle has arrived at a safe location for the purpose of imposing a final inducement. Such a determination will be based upon the vehicle experiencing the next key-off, refueling, or 60-minute idling event after imposing severe inducement. During the course of one day of vehicle operation, EPA believes it sufficiently likely an operator will encounter one of the three events triggering final inducement. In the unlikely scenario that one of the three events is not encountered, the severe inducement should still provide sufficient incentive for the operator to refill the reductant tank.

The above final and severe inducements are not meant to limit the use of other inducements prior to severe or final inducement. EPA encourages the use of additional inducements which would serve to minimize the amount of time either severe or final inducements are encountered.

When developing inducement strategies for review by EPA at the time of certification, manufacturers should be prepared to detail the type and level of inducements chosen and demonstrate how they will sufficiently compel drivers to maintain appropriate reductant levels and ensure vehicle operation is limited only to periods when proper SCR dosing is occurring.

EPA believes that an engine that is designed with warning and inducement strategies consistent with those above will be highly unlikely to be driven with an empty reductant tank, and therefore that such an engine would be adequately protected from operation with an empty tank.

C. Identification and Correction of Incorrect Reducing Agent

Assuring that an SCR-equipped engine is unlikely to be operated without proper reducing agent calls for an SCR system design that is able to detect incorrect or poor quality reducing agent. As noted above in the context of maintaining an adequate level of reducing agent, the emissions performance of SCR-equipped vehicles is dependent on having reducing agent in the system and the reducing agent must be of the proper quality. Therefore, the system must be able to identify and appropriately respond to poor reductant quality such as filling the reductant storage tank with a fluid other than the manufacturer-specified reducing agent, or with excessively diluted reducing agent. An example would be filling the tank with water rather than DEF, when DEF is the specified reducing agent.

Current urea-based SCR technology uses a robust NO_X sensor system to detect poor quality reductant. High NO_X emissions can be correlated to poor reductant quality and NO_X sensors are already part of the SCR system. Urea quality sensors directly measure DEF quality and appear likely to represent a quick detection method for addressing quality concerns in the future. Manufacturers are currently evaluating the performance and durability of various sensor designs.

NO_X sensor systems will take somewhat longer to detect poor quality reducing agent compared to urea quality sensors. Under ideal conditions, NO_X sensors can detect poor quality in 20 minutes, but may take as long as one hour to detect poor quality reductant. An advantage of urea quality sensors is that, once fully developed, they will provide operator notification of poor quality while the vehicle is still at a filling location.

Because NO_X sensors do not directly measure DEF quality, they do not detect variations in DEF quality as small as those detected by urea quality sensors. However, NO_X sensors adequately detect water which is the most likely substitute for DEF. Therefore, NO_X sensors are likely able to detect and prevent the majority of serious quality problems. Because of the ability of urea quality sensors to detect smaller concentration deviations in urea quality, we believe urea quality sensors will soon be the best reasonable technology to help manufacturers meet the adjustable parameter requirement. Urea quality sensors will also permit the emission control system to adjust DEF dosing based on the detected quality of the DEF and, in conjunction with the inducement strategies, help ensure that only compliant DEF is used. We expect urea quality sensors to be available for use in 2013 model year vehicles.

Under these design criteria, the engine design would have the following features to identify and respond appropriately to poor quality reducing agent or incorrect fluid:

1. Given the current technology, we believe manufacturers should be capable of detecting poor reductant quality within one hour. As improved technology becomes available, such as urea quality sensors, manufactures should decrease the likelihood, and increase the performance consequences of operation with poor quality reductant by incorporating the technology which best and most promptly detects poor reductant quality.

2. Immediately upon detection, the operator should be notified of the problem with warnings similar to those discussed above for inadequate reductant level. EPA expects the warning light or message addressing incorrect reducing agent would quickly increase in intensity to be continuously activated.

3. Given the current state of technology, the engine design should implement final inducement while the vehicle is operating and within 4 hours of detection. Alternately, if a manufacturer chooses to implement final inducement when the vehicle is stopped at a safe location, the engine design should implement severe inducement and search for final inducement triggers within 4 hours of detection. For this alternate approach, some lesser inducement should precede severe inducement at 2 hours after detection. While we believe it is appropriate that the vehicle respond in a similar manner when poor quality reducing agent is detected as when the vehicle runs low on reducing agent, we believe the inducement should not begin immediately. It is currently possible for a driver to receive poor quality reductant unknowingly and for a driver to need a certain amount of time after being alerted to the problem to have it remedied. Therefore, we think it currently appropriate to allow no more than 4 hours of operation following detection before imposing severe or final inducement. The 4 hours until severe or final inducement will allow the operator sufficient time to reach a service facility to remedy the problem.

4. If poor quality reductant is detected again within 40 hours after putting proper reducing agent in the tank, then the operator should be immediately notified and the poor quality final inducement or the alternate severe inducement approach should begin immediately. We believe continuing to monitor for repeat instances of poor quality reductant for 40 hours is likely to capture the vast majority of operators intentionally trying to circumvent SCR controls.

EPA believes design requirements that alert the operator to inadequate reducing agent and that institute inducements to assure correction of reducing agent quality are needed in order to ensure that the "adjustable parameter" of reductant quality is sufficiently limited. EPA believes that the warnings and inducements associated with poor quality reducing agent discussed above are burdensome enough that they ensure that introduction of poor quality reductant would not occur often or purposely and that in the unlikely event it occurs, proper actions will be taken within reasonable time limits to adequately minimize the operation of the vehicle/engine with poor quality reductant and associated excess emissions. We also believe the 4 hours until severe or final inducement is currently needed to allow the operator to locate and drive to a service facility capable of draining and refilling the tank.

EPA believes that an engine that is designed with the warning and inducement strategies discussed above will be highly unlikely to be driven with inadequate reductant for any significant period, and therefore that such an engine would be adequately protected from operation with inadequate reductant.

D. Tamper Resistant Design

SCR systems should be designed to be tamper resistant to reduce the likelihood that the SCR system will be circumvented or that the operating parameters of the system will be purposefully or inadvertently altered. Manufacturers should be careful to review any element of design that would prevent the proper operation of the SCR system to make tampering with that element of design impossible or highly unlikely. Manufacturers will have to demonstrate to EPA that their SCR system design is tamper resistant. 40 CFR 86.094–22(e) contains provisions regarding actions and criteria to ensure that elements of design related

to the adjustable parameters of DEF level and quality are adequately inaccessible, sealed, physically limited or stopped, or otherwise inhibited from adjustment.

1. At a minimum, the following actions, if done intentionally, would be considered tampering and manufacturers should design their SCR systems to ensure that restraints on such actions, whether purposeful or not, are adequate and such results are unlikely:

a. Disconnected reductant level sensor
b. Blocked reductant line or dosing valve
c. Disconnected reductant dosing valve
d. Disconnected reductant pump
e. Disconnected SCR wiring harness
f. Disconnected NO_X sensor (that is incorporated with the SCR system)
g. Disconnected reductant quality sensor
h. Disconnected exhaust temperature sensor
i. Disconnected reductant temperature sensor

2. EPA believes that the warnings and inducements described above for incorrect reducing agent would also be adequate under 40 CFR § 86.094–22(e) to prevent tampering or accidental actions causing the above results. The engine should be able to detect tampering as soon as possible, but no longer than one hour after a tampering event.

3. Immediately upon detection, the operator should be notified of the problem.

4. We believe the inducement should not begin immediately. It is possible that a part failure that occurs in the course of normal operation will be recognized as a result of these diagnostics. An operator should not immediately receive inducement for an event which may not have been caused by tampering. Therefore, we think it appropriate to allow 4 hours of operation following detection before implementing final inducement while the vehicle is in operation. Alternately, if a manufacturer chooses to implement final inducement when the vehicle is stopped at a safe location, the engine design should implement severe inducement and search for final inducement triggers within 4 hours of detection. For this alternate approach, some lesser inducement should precede severe inducement at 2 hours after detection. The 4 hours until severe or final inducement will allow the operator sufficient time to reach a service facility to remedy the problem.

5. If tampering of the same component is detected again within 40 hours after repair, then the operator should be immediately notified and the tampering final inducement, or the alternate severe inducement approach, should begin immediately. We believe continuing to monitor for repeat instances of tampering for 40 hours is likely to capture the vast majority of operators intentionally trying to circumvent SCR controls.

EPA believes that an engine that is designed with the warning and inducement strategies discussed above will be highly unlikely to be driven for any significant period under the aforementioned conditions, and that such an engine would be adequately protected from operation under such circumstances.

VIII. Conclusion

EPA is releasing this draft document for comments. We will continue to work with manufacturers, other stakeholders, and the public regarding issues related to its existing regulatory requirements and SCR technology.

Dated: May 27, 2011.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2011–13851 Filed 6–6–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1194]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before September 6, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1194, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically

excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Fremont County, Colorado, and Incorporated Areas				
Abbey Drainageway	Approximately 0.48 mile upstream of the Arkansas River confluence.	None	+5,274	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 1,400 feet upstream of Central Avenue	None	+5,396	
Fourmile Creek	Approximately 1,280 feet upstream of the Arkansas River confluence.	None	+5,257	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 1.39 miles upstream of U.S. Route 50	None	+5,361	
Mudd Gulch	Approximately 1,200 feet upstream of the Arkansas River confluence.	None	+5,239	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 0.64 mile upstream of Fourmile Parkway.	None	+5,514	
Mudd Gulch Split Flow	At the upstream side of the railroad	None	+5,235	Unincorporated Areas of Fremont County.
	Approximately 0.67 mile upstream of the Arkansas River confluence.	None	+5,250	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Canon City

Maps are available for inspection at City Hall, 128 Main Street, Canon City, CO 81212.

Unincorporated Areas of Fremont County

Maps are available for inspection at the Fremont County Courthouse, 615 Macon Avenue, Canon City, CO 81212.

Dallas County, Texas, and Incorporated Areas				
Bachman Branch	Approximately 0.31 mile upstream of the Browning Branch confluence.	+505	+501	City of Dallas.
	At the upstream side of Willow Lane	+590	+593	
Bear Creek	At the upstream side of Belt Line Road	+447	+446	City of Grand Prairie, City of Irving.
	Approximately 0.25 mile upstream of County Line Road.	+481	+479	
Beckley Club Branch	Approximately 700 feet upstream of Elmore Avenue	+472	+469	City of Dallas.
	Approximately 275 feet downstream of Appian Way	+554	+557	
Bennett Branch	Approximately 650 feet downstream of Beltline Road	+434	+433	City of Mesquite.
	Approximately 0.28 mile upstream of Plaza Drive	+472	+470	
Bentle Branch Creek	Approximately 500 feet upstream of the Tenmile Creek confluence.	+632	+631	City of Cedar Hill.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 190 feet upstream of County Highway 1382.	+752	+754	
Browning Branch	Approximately 750 feet downstream of Lake Hill Drive	+512	+508	City of Dallas.
	Approximately 150 feet upstream of Hollow Way Road.	+548	+547	
Cedar Creek	At the upstream side of Ewing Avenue	+446	+447	City of Dallas.
	At the upstream side of Montclair Avenue	+542	+540	
Chalk Hill Branch	At the upstream side of Davis Street	+517	+518	City of Cockrell Hill, City of Dallas.
	At the upstream side of Clarendon Drive	None	+615	
Coombs Creek	At the upstream side of Davis Road	+520	+527	City of Dallas.
	Approximately 650 feet upstream of Clarendon Drive	+597	+601	
Cottonwood Creek (of Lake Ray Hubbard).	Approximately 0.32 mile downstream of Stonewall Road.	+445	+447	City of Dallas, City of Garland, City of Rowlett, Unincorporated Areas of Dallas County.
	Approximately 400 feet upstream of Highridge Drive	+485	+486	
Cottonwood Creek (of White Rock Creek).	Approximately 1,200 feet upstream of the White Rock Creek confluence.	+503	+505	City of Dallas, City of Richardson.
	Approximately 0.40 mile upstream of Campbell Road	+667	+666	
Elmwood Branch	Approximately 800 feet upstream of Clarendon Drive	+500	+501	City of Dallas.
	At the upstream side of Wright Street	+595	+593	
Estes Branch	Approximately 350 feet downstream of Saint Augustine Drive.	+475	+476	City of Dallas.
	At the downstream side of Saint Augustine Drive	+475	+478	
Floyd Branch (of White Rock Creek).	Approximately 1,300 feet upstream of the Cottonwood Creek confluence.	+511	+510	City of Dallas, City of Richardson.
	At the downstream side of Polk Street	+622	+620	
Furneaux Creek	At the upstream side of President George Bush Turnpike.	+453	+450	City of Carrollton.
	Approximately 0.41 mile upstream of Dickerson Parkway.	+459	+460	
Hatfield Branch	At the upstream side of Prairie Creek Road	+404	+402	City of Dallas.
	Approximately 0.7 mile upstream of North Masters Drive.	+477	+478	
Hickory Creek	At the downstream side of Kelberg Road	+404	+401	City of Dallas.
	Approximately 700 feet upstream of C.F. Hawn Freeway.	+429	+430	
Hollings Branch	Approximately 0.50 mile upstream of the North Hollings Branch confluence.	None	+538	City of Cedar Hill, City of Grand Prairie.
	Approximately 0.3 mile upstream of Ellis Road	None	+638	
Hunt Branch	Approximately 900 feet upstream of the Cottonwood Creek (of White Rock Creek) confluence.	+557	+559	City of Dallas, City of Richardson.
	At the downstream side of Belt Line Road	+616	+613	
Hutton Branch	At the upstream side of Belt Line Road	+442	+443	City of Carrollton.
	Approximately 135 feet upstream of Midway Road	None	+605	
Lake June Branch	Approximately 650 feet upstream of the Prairie Creek confluence.	+461	+463	City of Dallas.
	At the downstream side of Oak Gate Lane	+489	+491	
Long Branch (of Duck Creek) Bypass.	At the upstream side of the Long Branch (of Duck Creek) confluence.	+498	+490	City of Mesquite.
	Approximately 460 feet upstream of the Long Branch (of Duck Creek) confluence.	+500	+493	
Long Branch (of Duck Creek)	Approximately 0.38 mile downstream of Northwest Drive.	+466	+468	City of Dallas, City of Mesquite.
	Approximately 200 feet downstream of I–635	+555	+553	
Meadowdale Branch	Approximately 950 feet downstream of Rowlett Road	None	+468	City of Garland.
	Approximately 150 feet downstream of Rowlett Road	None	+468	
North Mesquite Creek	Approximately 0.61 mile downstream of Lawson Road	+381	+379	City of Mesquite, Town of Sunnyvale, Unincorporated Areas of Dallas County.
	Approximately 205 feet downstream of Via Del Norte Road.	+507	+505	
North Mesquite Creek Spill	At the upstream side of the North Mesquite Creek confluence.	None	+481	City of Mesquite.
	At the downstream side of Tripp Road	None	+488	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Pleasant Branch	Approximately 1,000 feet upstream of the Prairie Creek confluence.	+467	+466	City of Dallas.
	At the downstream side of Bruton Road	+497	+498	
Prairie Creek	At the downstream side of I–20	+398	+397	City of Dallas.
	At the downstream side of Union Pacific Railroad	+523	+524	
Pruitt Branch	Approximately 1,450 feet upstream of the Prairie Creek confluence.	+412	+414	City of Dallas.
	At the downstream side of C.F. Hawn Freeway	+434	+435	
Richardson Branch	Approximately 0.3 mile downstream of Green Oaks Circle.	+506	+507	City of Dallas.
	At the downstream side of Forest Lane	+586	+588	
Rugged Branch	At the downstream side of Elmwood Boulevard	+550	+549	City of Dallas.
	Approximately 60 feet upstream of Berkley Avenue	+564	+565	
Rylie Branch	Approximately 0.38 mile upstream of the Hatfield Branch confluence.	+407	+409	City of Dallas.
	Approximately 550 feet downstream of Grady Lane	None	+456	
South Branch of Cedar Creek.	Approximately 100 feet downstream of I–35 East	+477	+474	City of Dallas.
	At the upstream side of Ohio Avenue	+525	+528	
South Branch of Cedar Creek Tributary 1.	At the upstream side of the South Branch of Cedar Creek confluence.	+500	+496	City of Dallas.
	At the downstream side of Louisiana Avenue	+507	+506	
South Mesquite Creek	Approximately 0.61 mile downstream of Lawson Road	+385	+383	City of Balch Springs, City of Mesquite.
	Approximately 420 feet upstream of Tam O'Shanter Drive.	+548	+545	
Stream 2A4	Approximately 850 feet upstream of Dalrock Road	+454	+453	City of Dallas, City of Rowlett.
	Approximately 660 feet upstream of Oak Hollow Drive	+480	+477	
Stream 2A5	Approximately 100 feet downstream of Spinnaker Cove.	+459	+461	City of Dallas, City of Rowlett.
	At the upstream side of Dalrock Road	+468	+467	
Stream 2B1	At the downstream side of Belt Line Road	+428	+429	City of Balch Springs, City of Mesquite.
	Approximately 500 feet downstream of Eastgate Drive	+458	+460	
Stream 2B2	At the upstream side of the Stream 2B3 confluence	+448	+443	City of Balch Springs, City of Mesquite.
	Approximately 0.25 mile upstream of I–635	+452	+453	
Stream 2B3	Approximately 425 feet upstream of the Stream 2B2 confluence.	+448	+446	City of Mesquite.
	Approximately 500 feet upstream of the Stream 2B2 confluence.	+450	+449	
Stream 2B4	Approximately 0.26 mile downstream of State Highway 352.	+445	+449	City of Mesquite.
	Approximately 100 feet upstream of Kearney Street	+475	+476	
Stream 2B5	Approximately 500 feet upstream of I–635	+451	+452	City of Mesquite.
	Approximately 0.22 mile downstream of Town East Boulevard.	+485	+482	
Stream 2B6	Approximately 400 feet upstream of the South Mesquite Creek confluence.	+472	+473	City of Mesquite.
	At the downstream side of Baker Drive	+501	+502	
Stream 2B7	Approximately 1,000 feet downstream of Tedlow Trail	+494	+491	City of Mesquite.
	Approximately 900 feet upstream of I–30	+523	+521	
Stream 2B8	Approximately 700 feet upstream of the South Mesquite Creek confluence.	+465	+464	City of Mesquite.
	Approximately 200 feet downstream of U.S. Route 80	+495	+493	
Stream 2E1	At the upstream side of Kyle Road	+475	+477	City of Rowlett.
	Approximately 0.39 mile upstream of the Long Branch (of Lake Ray Hubbard) confluence.	None	+486	
Stream 2E10	At the upstream side of Chiesa Road	+444	+449	City of Rowlett.
	Approximately 0.68 mile upstream of Chiesa Road	None	+470	
Stream 2E2	Approximately 0.49 mile downstream of Liberty Grove Road.	+438	+439	City of Rowlett.
	Approximately 1.09 miles upstream of Liberty Grove Road.	+488	+491	
Stream 2E2 Tributary 1	At the upstream side of the Stream 2E2 confluence	None	+466	City of Rowlett.
	At the downstream side of Big Cemetery Road	None	+475	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Stream 2E8	Approximately 0.32 mile upstream of the Muddy Creek confluence.	+473	+471	City of Garland, City of Rowlett, City of Sachse.
	Approximately 200 feet upstream of Merritt Road	+498	+499	
Stream 2J2	At the upstream side of Brookhaven Drive	+493	+494	City of Mesquite.
	Approximately 600 feet downstream of American Lane.	+506	+503	
Stream 4C3	Approximately 600 feet downstream of Kleberg Road	+402	+400	City of Dallas, City of Seagoville, Unincorporated Areas of Dallas County.
	At the upstream side of Belt Line Road	None	+455	
Stream 5B11	Approximately 400 feet upstream of the Floyd Branch confluence.	+593	+596	City of Richardson.
	Approximately 350 feet downstream of Polk Street	+634	+632	
Stream 5B12	Approximately 800 feet upstream of the Cottonwood Creek confluence.	+584	+585	City of Dallas, City of Richardson.
	At the downstream side of Cullum Street	+662	+660	
Stream 6A1	At the upstream side of Turtle Creek Boulevard	+484	+474	Town of Highland Park.
	Approximately 525 feet upstream of Beverly Drive	+527	+526	
Stream 6D1	At the upstream side of East Jackson Road	+498	+497	City of Carrollton.
	Approximately 800 feet upstream of East Jackson Road.	None	+502	
Stream 6D3	Approximately 900 feet upstream of the Hutton Branch confluence.	+479	+478	City of Carrollton.
	Approximately 450 feet upstream of Old Trinity Mills Road.	+556	+554	
Stream 6D4	At the upstream side of East Jackson Road	+500	+502	City of Carrollton.
	At the upstream side of Scott Mill Road	+516	+521	
Stream 6D5	Approximately 100 feet upstream of the Hutton Branch confluence.	+494	+493	City of Carrollton.
	Approximately 500 feet upstream of Waterford Way	+530	+523	
Stream 6D7	Approximately 300 feet upstream of Carmel Drive	None	+510	City of Carrollton.
	Approximately 250 feet upstream of Briardale Drive	None	+525	
Stream 6D8	Approximately 370 feet upstream of the Hutton Branch confluence.	+562	+564	City of Carrollton.
	At the upstream side of Tarpley Road	None	+613	
Stream JC–1	Approximately 0.22 mile upstream of the Johnson Creek confluence.	+450	+449	City of Grand Prairie.
	At the upstream side of West Tarrant Road	+499	+502	
Turtle Creek	At the downstream side of Blackburn Street	+445	+448	City of Dallas, Town of Highland Park.
	At the downstream side of Wycliff Avenue	+474	+473	
West Fork of South Mesquite Creek.	At the upstream side of Peachtree Road	+460	+461	City of Mesquite.
	Approximately 700 feet downstream of Anthony Drive	+500	+498	
White Rock Creek	At the upstream side of the Peaks Branch confluence	+407	+408	City of Dallas, Town of Addison.
	Approximately 0.4 mile upstream of the Hall Branch confluence.	+583	+588	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Balch Springs

Maps are available for inspection at the Public Works Department, 3117 Hickory Tree Road, Balch Springs, TX 75180.

City of Carrollton

Maps are available for inspection at the Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.

City of Cedar Hill

Maps are available for inspection at City Hall, 502 Cedar Street, Cedar Hill, TX 75104.

City of Cockrell Hill

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at City Hall, Department of Public Works, 4125 West Clarendon Drive, Cockrell Hill, TX 75211.

City of Dallas

Maps are available for inspection at the Department of Public Works, 320 East Jefferson Boulevard, Dallas, TX 75203.

City of Garland

Maps are available for inspection at City Hall, 800 Main Street, Garland, TX 75040.

City of Grand Prairie

Maps are available for inspection at the City Development Center, 206 West Church Street, Grand Prairie, TX 75051.

City of Irving

Maps are available for inspection at the Public Works Department, 825 West Irving Boulevard, Irving, TX 75015

City of Mesquite

Maps are available for inspection at the Engineering Division, 1515 North Galloway Avenue, Mesquite, TX 75185.

City of Richardson

Maps are available for inspection at the Engineering Office, 411 West Arapaho Road, Room 204, Richardson, TX 75083.

City of Rowlett

Maps are available for inspection at City Hall, 4000 Main Street, Rowlett, TX 75083.

City of Sachse

Maps are available for inspection at the Community Development Department, 5560 State Highway 78, Sachse, TX 75048.

City of Seagoville

Maps are available for inspection at City Hall, 702 North U.S. Route 175, Seagoville, TX 75182.

Town of Addison

Maps are available for inspection at the Public Works Department, 16801 Westgrove Drive, Addison, TX 75001.

Town of Highland Park

Maps are available for inspection at the Public Works Department, 4700 Drexel Drive, Highland Park, TX 75205.

Town of Sunnyvale

Maps are available for inspection at the Town Hall, 537 Long Creek Road, Sunnyvale, TX 75182.

Unincorporated Areas of Dallas County

Maps are available for inspection at the Dallas County Records Building, 509 Main Street, Dallas, TX 75202.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 11, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–14021 Filed 6–6–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 03–66; RM–11614; FCC 11–81]

The Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on a proposal to use wider channel bandwidths for the provision of broadband services in certain spectrum bands. Specifically, we consider changes to the out-of-band emission limits for mobile Broadband Radio Service (BRS) and Educational Broadband Service (EBS) devices operating in the 2496–2690 MHz band (2.5 GHz band). The proposed changes may permit operators to use spectrum more efficiently, and to provide higher data rates to consumers, thereby advancing key goals of the National Broadband Plan. Also, the changes would promote greater harmonization of FCC requirements with global standards for mobile devices in the 2.5 GHz band, potentially making equipment more affordable and furthering the development of mobile broadband devices. In addition, we seek comment on whether the proposed changes can be made without increasing the potential for harmful interference to existing users in the 2.5 GHz band and adjacent bands.

DATES: Submit comments on or before July 7, 2011. Submit reply comments on or before July 22, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by WT Docket No. 03–66, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/. Follow the instructions for submitting comments.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, at (202) 418–0797 or via the Internet to *John.Schauble@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth*

Further Notice of Proposed Rulemaking, FCC 11–81, adopted on May 24, 2011, and released on May 27, 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://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–11–81A1.doc.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

SUMMARY:

I. Background

1. *General:* On July 29, 2004, the Commission released the *BRS/EBS R&O & FNPRM,* which fundamentally transformed the rules for the 2.5 GHz band. In the *BRS/EBS R&O,* the Commission adopted a band plan that restructured the 2.5 GHz band into upper and lower-band segments for low-power operations (UBS and LBS, respectively), and a mid-band segment (MBS) for high-power operations, in order to reduce the likelihood of interference caused by incompatible uses. The Commission also revised the out-of band emission limits for BRS and EBS licensees consistent with a proposal made by a coalition of organizations representing BRS and EBS licensees. With respect to mobile devices, the Commission adopted an emission mask which requires that emissions outside the licensee's frequency bands of operation be attenuated below the transmitter power (P) by a factor of 43 + 10 log(P) decibels (dB) at the channel's edge, and 55 + 10 log(P) dB at 5.5 megahertz from the channel edge, where (P) is the transmitter power measured in watts. 5.5 megahertz represents the size of individual channels in the LBS and UBS in the post-transition band plan adopted by the Commission.

2. Today, the 2.5 GHz band is used by Clearwire Corporation (Clearwire) and other operators to provide wireless broadband service using the Worldwide Interoperability for Microwave Access (WiMAX) version 802.16e standard. WiMAX is a wireless broadband access technology based on the Institute of Electrical and Electronics Engineers (IEEE) 802.16 standard which supports delivery of non-line-of-sight connectivity between a subscriber station and base station with a typical cell radius of 3 to 10 kilometers. WiMAX can support fixed and nomadic, as well as portable and mobile, wireless broadband applications. Another standard for wireless broadband technology is Long Term Evolution (LTE), which is developed by the Third Generation Partnership Project (3GPP), a consensus-driven international partnership of telecommunications standards bodies. Both IEEE and 3GPP are working to develop standards for refinements of WiMAX and LTE, which are known as WiMAX 2 (based on the 802.16m standard and LTE–Advanced (3GPP Release 10 and beyond).

3. Current WiMAX deployments typically use maximum channel bandwidths of 10 megahertz. Clearwire reports that average usage for its mobile services is more than 7 GB/month. Wireless broadband data usage is projected to increase by a factor of at least twenty from 2009 to 2014. One way of making more efficient use of spectrum is to increase channel bandwidth. LTE–Advanced and WiMAX2 contemplate channel bandwidths up to 40–100 megahertz.

4. *WCAI Petition:* On October 22, 2010, the Wireless Communications Association International (WCAI) filed a petition for rulemaking asking the Commission to revise the out-of-band emission limits for mobile digital stations operating in the BRS and EBS band to accommodate channel bandwidths of 20 megahertz and wider. WCAI asserts that it is currently difficult for BRS/EBS devices to meet the out-of-band emission limits for 10 megahertz channels because of the limits of power amplifier efficiency inherent in current technology, and states that developing a smartphone that would fully use a 20 megahertz channel bandwidth that complies with the current out-of-band emission limits would be very difficult or impossible.

5. WCAI argues that the revised rules will not significantly increase the risk of interference, because mobile 4G devices using orthogonal frequency-division multiple access (OFDMA) technology (on which WiMAX and LTE are based) are not typically allocated all of the uplink bandwidth while operating at full transmit power, the scenario that would maximize potential interference. In addition, WCAI notes that mobile 4G devices operate under very stringent power controls in order to maximize battery life and minimize intra-system interference and argues that these changes are necessary to permit operators to realize the full benefits of 4G technologies.

6. A number of parties support the proposed rule changes, including Clearwire, the largest BRS licensee and lessee of EBS spectrum and DigitalBridge Communications Corp., a mobile WiMAX provider; as well as equipment and component manufacturers including GCT Semiconductor, HTC America, Inc., Motorola, Inc., and Nokia Siemens Networks US LLC/Nokia Inc. These parties assert that the proposed changes would allow wireless carriers to realize the full benefits of 4G technologies, offer a greater variety of services and applications, allow more efficient use of spectrum, and better align the Commission's rules with the approach of 3GPP and other standards bodies.

7. One concern raised in the oppositions is that the rule change will result in increased interference to service providers in adjacent spectrum bands. Globalstar, Inc. (Globalstar), which is authorized to operate a mobile satellite service (MSS) system with the downlink (satellite to mobile earth stations) in the 2483.5–2500 MHz band, asserts that the proposed change could cause significant harm to its MSS users, including consumers and public safety users. Similarly, Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) are concerned that the proposed change could result in greater interference to Broadcast Auxiliary Services (BAS) operations operating on Channels A10 (2483.5–2500 MHz) and A9 (2467–2483.5 MHz). With respect to the concerns raised by Globalstar and EIBASS, WCAI responds that those parties exaggerate the risk of interference, because the chances that BRS Channel 1 would be operating at full power across the entire bandwidth of the channel in the vicinity of Globalstar's mobile receivers and BAS Channels A9 or A10 receivers are very low.

8. IP Wireless, Inc. (IP Wireless), a developer and manufacturer of 3GPP user equipment, opposes the rule changes proposed by WCAI because it does not believe changes are necessary to permit wider bandwidth operations. IP Wireless asserts that it makes available LTE devices that can "easily" meet the FCC's existing out-of-band emission limits for mobile devices operating with 20 megahertz channels. WCAI responds that IP Wireless is just one equipment supplier in a larger ecosystem and that other equipment manufacturers agree "that the mask proposed in the Petition represents an

appropriate and reasonable trade-off between form factor, battery consumption, and performance, especially for the most challenging type of device: highly integrated smartphones with multiple radios."

II. Discussion

9. We find that facilitating the use of wider channels in the 2.5 GHz spectrum band would greatly enhance spectrum efficiency and throughput in wireless broadband systems operating in the band. We also find that the opportunity to harmonize the Commission's rules with international standards could benefit both operators and consumers by encouraging the development of mobile broadband equipment for the 2.5 GHz band at lower cost. For these reasons, we initiate this rulemaking on WCAI's proposal to change the out-of-band emission limits for mobile devices for BRS and EBS.

10. Specifically, we seek comment on whether to modify the out-of-band emission limits for BRS and EBS mobile digital stations by modifying the factors by which these devices' emissions outside the licensee's frequency bands of operation must be attenuated below the transmitter power (P), in Watts, to the following, as requested by WCAI:

- 40 + 10 log (P) dB at the channel edge, measured using a resolution bandwidth of 2 percent of the emission bandwidth of the fundamental emission in the 1 megahertz bands immediately outside and adjacent to the frequency block.
- 43 + 10 log (P) dB beyond 5 megahertz from the channel edges, and
- 55 + 10 log (P) dB attenuation factor at a distance of "X" megahertz from the channel edges, where "X" is the greater of 6 megahertz or the actual emission bandwidth as defined in § 27.53(m)(6) of the Commission's rules.

WCAI asserts that these changes would allow operators to provide the full uplink capacity available in 20 megahertz or wider channels, and would harmonize the Commission's out-of-band emission limits with 3GPP standards for out-of-band emission limits in the 2.5 GHz band.

11. WCAI has argued that it will be particularly difficult to design smartphone devices with small form factors that can use 20 megahertz channels and meet the current OOBE requirements, and asserts that IP Wireless does not offer any handset devices. Does the existence of some mobile devices capable of operating on 20 megahertz channels and meeting the current FCC OOBE rules affect the necessity or desirability of making the proposed rule changes?

12. We seek comment on whether the proposed rule change is necessary to permit mobile devices to operate in the 2.5 GHz band using channel bandwidths wider than 10 megahertz. IP Wireless claims to have equipment capable of operating on 20 megahertz channels that meets the FCC's current out-of-band emission limits, but a number of other equipment manufacturers and operators support the proposed rule change. Also, IP Wireless also argues that the proposed rule changes will result in insufficient protection against interference within the 2.5 GHz band. Specifically, it claims that the more permissive 3GPP emissions standard on which the proposed rule changes are modeled has traditionally been applied to paired (Frequency Division Duplex (FDD)) spectrum allocations, and cites a European Conference of Postal and Telecommunications Administrations (CEPT) report for support that coexistence between FDD and Time Division Duplex (TDD) systems in adjacent spectrum, or between uncoordinated TDD systems, is generally achieved by a combination of the 3GPP emissions standards and guard bands. However, the CEPT report notes that the block edge mask limits it proposed were developed in order to manage the risk of harmful interference independently of any relaxation which may be achieved through mitigation techniques or coordination. We seek comment on how adoption of the proposed rule changes would affect the likelihood of interference within the 2.5 GHz band and whether additional protections against such interference would be needed. In that regard, we note that our existing rules contain a provision requiring both licensees to comply with a tighter emission mask for its base stations within 60 days of receiving a documented interference complaint from an adjacent channel licensee. Since mobile devices and base stations operate in the same frequency band in TDD systems, and base stations operate with higher power, it appears that the existing provisions in our rules may protect adjacent channel licensees with protection against adjacent channel interference. We seek further comment on this issue.

13. Globalstar and EIBASS contend that adopting WCAI's requested OOBE limits would increase the potential for harmful interference into the MSS and BAS bands and we seek comment. The Commission has previously said that the BRS/EBS out-of-band emission limits "should allow MSS providers to operate without unnecessary restrictions or significant interference in the 2483.5–2495 MHz band." The same considerations apply to adjacent band BAS operations. As noted above, Globalstar, EIBASS and WCAI disagree about whether the proposed rule changes could result in increased interference into services below 2495 MHz, the likelihood that such interference could result, and the harms that could result from such interference. In view of these disputes in the record, we seek comment including detailed engineering analyses on the potential for, and likelihood that, the proposed rule changes will result in harmful interference into MSS and BAS operations below 2495 MHz. In this vein, we seek comment on the assumptions used by Globalstar in its engineering study, including its definition of interference as a signal level above −133 dBm/MHz. We also seek additional engineering analyses related to the potential for interference, in which the key assumptions underlying the analysis are identified, and accompanied by an explanation of why these assumptions are appropriate. We also seek comment on the significance of the fact that MSS licensees can file documented interference complaints against adjacent channel licensees and take advantage of the provisions that could require adjacent channel BRS licensees to comply with tighter base station emission masks.

14. In addition, we seek comment on whether, in connection with the proposed rule changes, we should consider adopting additional measures of protecting against interference to adjacent bands. For example, we seek comment on the desirability and feasibility of establishing a fixed limit on out-of-band emissions below 2495 MHz or above 2690 MHz in order to protect adjacent bands' operations. While the WCAI Petition and comments discuss the use of 20 megahertz channels, the proposed rule is not limited to 20 megahertz channels, and developing standards contemplate the use of wider channels. We seek comment on whether the proposed rule would work for channels wider than 20 megahertz without causing interference to adjacent bands' operations, or whether we should set a maximum channel size to which the proposed out-of-band emission limits would apply. In addition, while the proposed rule change relies on standards being developed by 3GPP, we seek comment on whether, to the extent such information is available, the proposed changes would be consistent with IEEE's continuing development of

WiMAX2, as well as other evolving standards. Finally, we seek comment on whether any additional changes to the OOBE limits applicable to mobile devices in the 2.5 GHz band are necessary or desirable to promote greater efficiency and flexibility in the provision of broadband services in these bands?

Procedural Matters

Ex Parte Rules—Permit-But-Disclose Proceeding

15. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

Comment Period and Procedures

16. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Comments shall be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).
- *Availability of Documents:* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 1–800–378–3160.

Paperwork Reduction Analysis

17. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection 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) requirements.

Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Fourth Further Notice of Proposed Rulemaking (4th FNPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *4th NPRM* for comments. The Commission will send a copy of this *4th FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *4th FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

A. Need for, and Objectives of, the Proposed Rules

In this *4th FNPRM,* we seek comment on changing the out-of-band emission limits, which limit the amount of energy that can be radiated outside a licensee's authorized bandwidth, for mobile devices operating in the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) in the 2496–2690 MHz band (2.5 GHz band). The proposed change is designed to facilitate the use of wider channel bandwidths, which could potentially allow higher data rates and more efficient use of spectrum. Such a change would increase the range of applications and devices that can benefit from mobile broadband connectivity, generating a corresponding increase in demand for mobile broadband service from consumers, businesses, public safety, health care, education, energy and other public safety uses. The proposed change is also designed to facilitate harmonization of future standards in the equipment market for mobile devices in the 2.5 GHz band, which would make equipment more affordable and further the development of advanced wireless broadband devices. We seek comment on whether the proposed changes can be made without any increase in the potential for harmful interference to existing users in the 2.5 GHz band and adjacent bands. We also consider establishing an additional requirement of fixed interference limits below 2496 MHz and above 2690 MHz in order to protect adjacent band users.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one 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.

Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

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

This *4th FNPRM* imposes no new reporting or recordkeeping requirements.

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

The only potential burden on small entities that hold BRS or EBS licenses is a potential increase in interference to existing users in the 2.5 GHz band. We believe this potential burden would be outweighed by benefits to small businesses that hold BRS and EBS licensees, who would be able to use wider channel bandwidths to provide faster service and use their spectrum more efficiently. An alternative being considered in order to minimize any potential burden is establishing fixed interference limits below 2496 MHz and above 2690 MHz in order to protect adjacent band users.

The other main alternative would be to maintain the existing rules. If we maintained the existing rules, it would be more difficult or impossible for BRS and EBS operators to offer broadband systems with higher data rates by using wider channel bandwidths. Such difficulty would make it more difficult for BRS and EBS operators, including small entities, to be competitive with other broadband providers.

Ordering Clauses

19. Accordingly, it is ordered that notice is hereby given of the proposed regulatory changes described in this *Fourth Further Notice of Proposed Rulemaking,* and that comment is sought on these proposals.

20. It is further ordered pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fourth Further Notice of Proposed Rulemaking,* including the Final Regulatory Certification and the Initial Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.53 is amended by revising paragraphs (m)(4) and (m)(6) to read as follows:

§ 27.53 Emission Limits.

* * * * *

(m) * * *

(4) For mobile digital stations, the attenuation factor shall be not less than 40 + 10 log (P) dB at the channel edge, 43 + 10 log (P) dB beyond 5 MHz from the channel edges, and 55 + 10 log (P) dB at X MHz from the channel edges, where X is the greater of 6 MHz or the actual emission bandwidth as defined in § 27.53(m)(6). Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on channel BRS Channel 1 on the same terms and conditions as adjacent channel BRS or EBS licensees.

* * * * *

(6) Measurement procedure. Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent (or two percent for mobile digital stations) of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (*i.e.,* 1 megahertz). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power. With respect to television operations, measurements must be made of the separate visual and aural operating powers at sufficiently frequent intervals to ensure compliance with the rules.

* * * * *

[FR Doc. 2011–14001 Filed 6–6–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 396

[Docket No. FMCSA–2011–0046]

RIN 2126–AB34

Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report for Intermodal Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to revise a requirement of the Federal Motor Carrier Safety Regulations that applies to intermodal equipment providers and motor carriers operating intermodal equipment. The Agency proposes to delete the requirement for drivers operating intermodal equipment to submit and intermodal equipment providers to retain driver-vehicle inspection reports when the driver has neither found nor been made aware of any defects on the intermodal equipment used. This NPRM responds to a joint petition for rulemaking from the Ocean Carrier Equipment Management Association and the Institute of International Container Lessors.

DATES: Send your comments on or before August 8, 2011.

ADDRESSES: You may submit comments identified by Docket ID Number FMCSA–2011–0046 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC–PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–5370.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2011–0046), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "Submit a Comment" box, which will then become highlighted in blue. In the "Select Document Type" drop-down menu, select "Proposed Rule," insert "FMCSA–2011–0046" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the

comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the "Read Comments" box in the upper right-hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2011–0046" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. 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. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's (DOT) Privacy Act system of records notice for the DOT Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008 (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

II. Abbreviations

ATA American Trucking Associations
CMV commercial motor vehicle
DOT U.S. Department of Transportation
DVIR driver-vehicle inspection report
FHWA Federal Highway Administration
FMCSRs Federal Motor Carrier Safety Regulations
IANA Intermodal Association of North America
IEP intermodal equipment provider
IICL Institute of International Container Lessors
IME intermodal equipment
NPRM Notice of Proposed Rulemaking
OCEMA Ocean Carrier Equipment Management Association
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act; A Legacy for Users
Secretary Secretary of Transportation

III. Legal Basis for the Rulemaking

Although cargo containers move by ship, and often also by rail, their journeys generally begin and end on chassis trailers for transportation by highway to their final destinations. These trailers, generally referred to as intermodal equipment (IME), fall under FMCSA's safety jurisdiction. At issue in this NPRM is the requirement that drivers complete driver vehicle inspection reports (DVIRs) which note the existence or absence of defects or deficiencies in IME. FMCSA proposes to eliminate the requirement that drivers complete DVIRs when they have no defects or deficiencies to report.

This NPRM is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act), both of which are broadly discretionary, and the specific mandates of section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act; a Legacy for Users (SAFETEA–LU Pub. L. 109–59, 119 Stat. 1144, at 1729, August 10, 2005, codified at 49 U.S.C. 31151).

The 1935 Act provides that the Secretary of Transportation (Secretary) may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a (for-hire) motor carrier (49 U.S.C. 31502(b)(1)), and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a (not for-hire) motor private carrier, when needed to promote safety of operation (49 U.S.C. 31502(b)(2)). This rulemaking is based on the Secretary's authority under both provisions.

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Codified at 49 U.S.C. 31136(a), section 206(a) of the 1984 Act requires the Secretary to publish regulations on motor vehicle safety. Specifically, the Act sets forth minimum safety standards to ensure that: (1) Commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)); (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely (49 U.S.C. 31136(a)(2)); (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely (49 U.S.C. 31136(a)(3)); 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)(4)).

Section 4118 of SAFETEA–LU, entitled "Roadability," requires the Secretary to issue regulations "to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained." Section 31151(a)(3) of title 49, United States Code, specifies a minimum of 14 items to be included in those regulations. It also authorizes departmental employees designated by the Secretary to inspect IME and copy related maintenance and repair records (49 U.S.C. 31151(b)). Any IME that fails to comply with applicable Federal safety regulations may be placed out of service (OOS) by Departmental or other Federal, State, or governmental officials designated by the Secretary until the necessary repairs have been made (49 U.S.C. 31151(c)). Also included is a provision preempting inconsistent State, local, or tribal requirements, but providing that preemption may be waived upon application by the State if the Secretary finds the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce (49 U.S.C. 31151(d) and (e)).

FMCSA published a final rule on December 17, 2008 (73 FR 76794) implementing the SAFETEA–LU requirements. That rule requires Intermodal Equipment Providers (IEPs) to register and file with FMCSA an Intermodal Equipment Provider Identification Report (Form MCS–150C); establish a systematic inspection, repair, and maintenance program in order to provide IME that is in safe and proper operating condition; maintain documentation of their maintenance program; and provide a means to respond effectively to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies. The regulations also require IEPs to mark each intermodal chassis offered for transportation in interstate commerce with a DOT identification number. These regulations, for the first time, make IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSRs), and call for shared safety responsibility among IEPs, motor carriers, and drivers. Additionally, FMCSA adopted inspection requirements for motor carriers and drivers operating IME.

IV. Background

Section 4118 of SAFETEA–LU [Pub. L. 109–59, August 10, 2005, 119 Stat. 1144, 1729] amended 49 U.S.C. chapter 311 to require that the Secretary establish a program ensuring that IME used to transport intermodal containers is safe and systematically maintained (49 U.S.C. 31151). Among other things, the statute called for the Secretary to mandate "a process by which a driver or motor carrier transporting IME is required to report to the IEP or the providers' designated agent any actual damage or defect in the IME of which the driver or motor carrier is aware at the time the IME is returned to the IEP or the provider's designated agent" (49 U.S.C. 31151(a)(3)(L)).

To satisfy this statutory requirement, FMCSA proposed a rule that for the first time would (1) make IEPs subject to the FMCSRs and (2) call for a shared safety responsibility among IEPs, motor carriers, and drivers (71 FR 76796, December 21, 2006). That proposed rule included a new § 390.44 (changed to § 390.42 in the final rule), which prescribed the responsibilities of drivers and motor carriers when operating IME. Proposed § 390.44(b) required the driver or motor carrier to report any damage or deficiencies in the equipment at the time the equipment is returned to the IEP. These included, at a minimum, the items listed in proposed § 396.11(a)(2), which required that the IEP have a process in place to receive reports of defects or deficiencies in the equipment and which listed the specific components that must be included on the DVIR. Finally, FMCSA proposed a new § 396.12 that required IEPs to establish a procedure to accept reports of defects or deficiencies from motor carriers or drivers, repair the defects that are likely to affect safety, and document the procedure. Importantly, FMCSA did *not* propose any changes to § 396.11(b), "Report content," which requires—for both non-IME and IME—that "If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate." This requirement to prepare a DVIR, even in the absence of equipment defects or deficiencies (hereafter a "no-defect DVIR"), has been in the safety regulations since 1952 (17 FR 4422, 4452, May 15, 1952).[1] FMCSA did not receive any comments opposing its decision not to make changes to § 396.11(b).

In the final rule, published December 17, 2008 (73 FR 76794), the Agency added language in the new § 390.42(b) (which had been § 390.44 in the NPRM) and § 396.12(b)(4) to clarify that "if no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate." This was done to make the new rules for IEPs consistent with § 396.11(b), which has, for many years, required drivers to prepare no-defect DVIRs.

[1] The driver's responsibility to report vehicle defects has always been part of the Federal safety regulations for CMVs. Part 6, Rule 6.6, of the Motor Carrier Safety Regulations issued by the Interstate Commerce Commission (ICC) in 1939 called for every driver to submit a written report at the end of his day's work or tour of duty to inform his employer of any vehicle defect or deficiency he discovered that would likely affect the safety of operation of that vehicle (4 FR 2294, 2305, June 7, 1939). The ICC recommended, but did not require, motor carriers to use a Driver's Trip Report. The report included the driver's name, vehicle number, date, a list of 20 items for inspection and a space for the driver and mechanic to note defects.

On October 27, 2009, Ocean Carrier Equipment Management Association (OCEMA) petitioned FMCSA for a partial extension of the compliance date for §§ 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d). These provisions include the process for delivering the DVIR and acting on defects or deficiencies reported. FMCSA granted the petition. In a final rule published December 29, 2009, the compliance date for these provisions was extended from December 17, 2009, to June 30, 2010 (74 FR 68703).

V. OCEMA's and IICL's Petition

On March 31, 2010, OCEMA and Institute of International Container Lessors (IICL) jointly petitioned FMCSA to rescind the part of § 390.42(b) that concerns a driver's responsibility to file no-defect DVIRs with IEPs on IME they are returning.[2] The regulatory text at issue states:

> (b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. *If no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.* The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter (emphasis added).

OCEMA and IICL requested that FMCSA delete the sentence in italics.

The petitioners presented four arguments against the DVIR element of the current rule:

(1) SAFETEA–LU requires DVIRs only for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so. The regulatory imposition of no-defect DVIRs is not required by law and likely is inconsistent with Congressional intent.

(2) There is a significant risk that the volume of no-defect DVIRs, if required, could overwhelm the 4 percent of DVIRs that contain damage or defects. Using a sampling of industry data from 2007–2009, OCEMA estimated that 16.9 percent of chassis operating in the United States are in-gated (return to the IME through the in-gate process) every day. Assuming a fleet of 650,000 active chassis per day, there are 109,850 in-gates per day and 40,095,250 in-gates per year. The petitioners estimated that approximately 96 percent of DVIRs collected do not contain discrepancies, which results in 38,491,440 no-defect DVIRs per year. The risk is that 1,603,810 DVIRs, or 4 percent of the total, that contain defect and damage information will be lost, obscured, or delayed by the sheer magnitude of the remaining 96 percent of no-defect DVIRs.

[2] Although the petition did not specifically address the analogous requirement in § 396.12(b)(4), this NPRM addresses the issue of "no-defect DVIRs" throughout Parts 390 and 396.

(3) The petitioners added that "Data transmission, processing, and storage requirements for no-defect DVIRs add significant unnecessary costs to intermodal operations with no apparent offsetting benefits." They stated:

> Each DVIR processed will involve utilizing the GIER [Global Intermodal Equipment Registry] system to retrieve the USDOT number at a transaction cost of $.02. For an estimated 38,491,440 no-defect DVIRs per year, IEPs would incur over $769,828.00 in costs to retrieve just that information.

(4) The petitioners claimed that submission of no-defect DVIRs contributes to driver productivity losses in the form of congestion and delay at intermodal facilities. The petitioners assumed that truck drivers take 3 minutes to fill out a report, which results in 1,924,572 driver hours lost per year. They added:

> IEPs will incur costs associated with storage of electronic or paper copies and the reproduction of same for FMCSA personnel. Assuming truck drivers take 3 minutes per report, this would mean almost 2 million driver-hours spent on a largely meaningless exercise.

FMCSA granted the petition on July 30, 2010. The Agency Order granting the petition has been placed in the docket.

Because FMCSA did not have sufficient time to address the petition through a notice-and-comment rulemaking prior to the compliance date of June 30, 2010, it published a final rule on August 20, 2010 that extended the compliance date for § 390.42(b) to June 30, 2011 (75 FR 51419).

VI. Agency Analysis of the Petition and Discussion of Proposed Rule

The Agency agrees with the petitioners that the existing requirement for motor carriers to prepare no-defect DVIRs goes beyond the specific requirements of 49 U.S.C. 31151(a)(3)(L). In its 2008 final rule, FMCSA, for the first time, subjected IEPs to the FMCSRs, and called for shared safety responsibility among IEPs, motor carriers, and drivers regarding processes for assessing the condition of IME and documenting deficiencies and repairs. Section 390.40(d) requires an IEP to "provide intermodal equipment that is in safe and proper operating condition." At facilities at which the IEP makes IME available for interchange, § 390.40(i) requires that the IEP must (1)

develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or (2) replace the equipment. Existing regulations provide a system of checks and balances to ensure that all IME offered for interchange is in safe and proper operating condition—regardless of whether the motor carrier prepared a DVIR for IME that had no damage, defects, or deficiencies at the time it was returned.

Accordingly, FMCSA is proposing to eliminate the language of §§ 390.42(b) and 396.12(b)(4) that expressly requires motor carriers to prepare and transmit a no-defect DVIR to the IEP upon returning the IME. For consistency, the Agency is also proposing minor amendments to § 396.11(b) to clarify that no-defect DVIRs do not need to be prepared for items of IME.

This proposed rule does not change a driver's obligation to assess the condition of IME at the end of a workday to determine whether the IME has defects or deficiencies that could affect the safety of its operation. Although FMCSA proposes to remove the requirement to complete a DVIR if the driver has found no defects in the IME and none have been reported to the driver, he or she must still inspect the IME to make this determination. This proposed change also does not affect requirements governing the inspection and completion of DVIRs for power units.

Although FMCSA is proposing to make the change requested by the petitioners, it still seeks comments from all interested parties on certain aspects of the DVIR process. First, there are differences between the Petitioners' and FMCSA's previously published cost and time burden estimates associated with no-defect DVIRs. The Information Collection Request (ICR) statement referenced in the 2008 final rule [3] estimated the time spent for a driver to prepare a written inspection report and provide a copy to his/her employing motor carrier as approximately 2 minutes 30 seconds on average. Additionally, 5 seconds were estimated for a driver to review and acknowledge the last vehicle inspection report that had noted no vehicle defects. This results in a total burden of 2 minutes 35 seconds when no defect was found, less than the 3 minute burden presented in the petition. Neither the 2008 final rule nor the petition evaluated the time burden of handling DVIR paperwork by motor carriers and IEP staff.

Second, the petitioners also stated that a $.02 transaction cost is incurred by the IEP to retrieve the USDOT number through an electronic database, which is necessary for IME identification and completion of no-defect DVIR processing. However, the Agency published a technical amendment on December 29, 2009 (74 FR 68703), which introduced a fifth option for IME identification: use of an electronic database system. The Agency required that several conditions be satisfied, specifically, that the system not require a user-fee:

> 2. The identification system shall be publicly-available, and offer read-only access for inquiries on individual items of IME without requiring advance user registration, a password, or a *usage-fee.* The identification system must be accessible through: real-time internet access via public web portal; and toll-free telephonic access (emphasis added)

Because the Agency cannot validate the cost and time burden associated with no-defect DVIRs, the Agency is requesting that commenters to this rulemaking provide their analysis of the DVIR process. FMCSA requests comments from all interested parties on these questions:

1. DVIR Handling

1.1. Please explain in detail the procedures for filing and maintaining DVIRs from the time they are completed through the end of their retention periods. Are defect DVIRs are kept separate from no-defect DVIRs, sent to maintenance staff, and then acted on? Do you have special procedures in place for the no-defect DVIRs? If so, please describe them.

1.2. Do you have examples of specific incidents in which handling of a large volume of no-defect DVIRs has interfered with handling of defect DVIRs? If so, please describe how these additional documents affected the repairing of defects.

1.3. Some DVIRs are completed electronically. Are the electronic DVIRs automatically or manually separated into defect and no-defect categories? Do you have an estimate of the percentage of forms filled out on paper and electronically? If so, please provide detailed information on the data and methodology used for that estimate.

2. Please provide information on the percentage of no-defect DVIRs. Also, please provide a discussion of the methodology for developing this information.

Proposed Changes

This proposed rule would revise §§ 390.42(b), 396.11(b), and 396.12(b)(4) to delete the sentence, "If no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate." This proposed rule also makes an editorial change. The language that was originally under § 396.11(b) has been split, for clarity, into three subparagraphs: § 396.11(b)(1), (2), and (3), respectively. New text, as described, is contained in § 396.11(b)(2).

VII. Regulatory Analyses

Executive Orders 13563 and 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action does not meet the criteria for a "significant regulatory action." either as specified in Executive Order 12866 as supplemented by Executive Order 13563 issued by the President on January 18, 2011 (76 FR 3821) or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). If this rule becomes final, the industry would not be expected to experience new costs.

The proposed rule would remove the requirement for drivers to submit DVIRs when they do not have IME defects or deficiencies to report. Because the requirement for identifying IME only came into effect in December 2010, and because information management systems and crash report forms are still in the process of being revised to identify IEPs, the Agency does not have current data on crashes involving IME or subject to the December 2008 rule. Because IEPs continue to be required to provide IME intended for interchange to motor carriers that is in safe and proper operating condition, the Agency does not expect implementation of this rule to result in any change in the number of truck crashes.

Lacking independent data, FMCSA also is unable to estimate the precise aggregate benefits of the proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether proposed rules could have a significant economic impact on a substantial number of small entities. This proposed rule would grant regulatory relief to IEPs, which consist of 108 entities, including steamship lines, railroads, and chassis pool operators. In its 2008 final rule, the Agency confirmed that all IEPs are either foreign-owned or otherwise do not meet the criteria for small business

[3] See the currently approved supporting statement for Inspection, Repair and Maintenance Information Collection Request (ICR) (OMB control number 2126–0003).

designation as defined by the Small Business Administration (73 FR 76816). Consequently, the Agency certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $140.8 million (which is the value of $100 million in 2009 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We determined that this rulemaking does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

A rulemaking 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. FMCSA analyzed this proposed action in accordance with Executive Order 13132. The proposal would not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this rulemaking would preempt any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We determined that no new information collection requirements are associated with this proposed rule. The Agency believes that, if promulgated, this rulemaking would result in a reduction in the information collection burden associated with completing the driver-vehicle inspection report, but cannot quantify the reduction at this time.

National Environmental Policy Act

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this proposed action does not have any effect on the quality of the environment. Therefore, this NPRM is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The Categorical Exclusion under paragraph 6(y)(6) relates to "regulations concerning vehicle operation safety standards," such as the driver-vehicle inspection reports addressed by this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

We also analyzed this proposal under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

In addition to the NEPA requirements to examine impacts on air quality, the CAA also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional contributions to air emissions from any of the options are expected to fall within the CAA *de minimis* standards and are not expected to be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, subchapter B, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

2. Revise § 390.42(b) to read as follows:

§ 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

* * * * *

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

3. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

4. Revise § 396.11(b) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) *Report content.* (1) The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver that would affect the safety of operation of the vehicle or result in its mechanical breakdown.

(2) For vehicles other than intermodal equipment tendered by intermodal equipment providers, if no defect or deficiency is discovered by or reported to the driver, the written report shall so indicate.

(3) For intermodal equipment tendered by intermodal equipment providers, if no defects or deficiencies are discovered by or reported to the driver, no written report is required.

(4) In all instances where a written driver vehicle inspection report is required, the driver shall sign the report. On two-driver operations, only one driver needs to sign, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

* * * * *

5. Revise § 396.12(b)(4) to read as follows:

§ 396.12 Procedures for intermodal equipment providers to accept reports required by § 390.42 (b) of this chapter.

* * * * *

(b) * * *

(4) All damage, defects, or deficiencies of the intermodal equipment must be reported to the equipment provider by the motor carrier or its driver. If no defect or deficiency in the intermodal equipment is discovered by or reported to the driver, no written report is required.

* * * * *

Issued on: May 27, 2011.

Anne S. Ferro,

Administrator, FMCSA.

[FR Doc. 2011–13935 Filed 6–6–11; 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–2010–0007; MO 92210–0–0008 B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Striped Newt as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the striped newt (*Notophthalmus perstriatus*) as threatened under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the striped newt as endangered or threatened is warranted. Currently, however, listing the striped newt 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 striped newt to our candidate species list. We will develop a proposed rule to list the striped newt 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 June 7, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0007. 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, North Florida Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Dave Hankla, Field Supervisor, North Florida Field Office (see **ADDRESSES**); by telephone at (904) 731–3336; or by facsimile at (904) 731–3045. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a 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 immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, 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 July 14, 2008, we received a petition dated July 10, 2008, from Dr. D. Bruce Means, Ryan C. Means, and Rebecca P.M. Means of the Coastal Plains Institute and Land Conservancy (CPI), requesting that the striped newt (*Notophthalmus perstriatus*) be listed as threatened under the Act. Included in the petition was supporting information regarding the species' taxonomy, biology, historical and current distribution, and present status, as well as a summary of actual and potential threats. We acknowledged the receipt of the petition in a letter to petitioners dated August 15, 2008. In that letter we also stated that we could not address their petition at that time because responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding.

Funding became available to begin processing the petition in early 2010. On March 23, 2010, we published a 90-day finding (75 FR 13720) that the petition presented substantial information indicating that listing the striped newt may be warranted and that we were initiating a status review, for which we would accept public comments until May 24, 2010. This

notice constitutes the 12-month finding on the July 14, 2008, petition to list the striped newt as threatened.

Species Information

Our 90-day finding summarized much of the current literature regarding the striped newt's distribution, habitat requirements, and life history, and may be reviewed for detailed information (75 FR 13720, March 23, 2010). Below, we briefly summarize previously presented information, and provide new information that we believe is relevant to understanding our analysis of the factors affecting the striped newt.

Taxonomy and Species Description

There are three species of *Notophthalmus* found in North America. These include the eastern red spotted newt (*N. viridescens*), the black-spotted newt (*N. meridionalis*), and the striped newt (*N. perstriatus*). The three species are found in different areas throughout the United States and Mexico (Reilly 1990, p. 51). Reilly (1990, p. 53), in his study of *Notophthalmus spp.,* found that *N. perstriatus* and *N. meridionalis* are distinct species that are more similar and phylogenetically more closely related than either is to *N. viridescens.* In 2008, Zhang *et al.* (2008, pp. 586 and 592) looked at the phylogenetic relationship (*i.e.,* evolutionary history of an organism) of the family Salamandridae and found that the clade (*i.e.,* group of species that includes all descendents of a common ancestor) containing newts was separate from the clade containing "true" salamanders. The branching order of the clades for newts are: Primitive newts (*Echinotriton, Pleurodeles,* and *Tylototriton*), New World newts (*Notophthalmus* and *Taricha*), Corisca-Sardinia newts (*Euproctus*), modern European newts (*Calotriton, Lissotriton, Mesotriton, Neurergus, Ommatotriton,* and *Triturus*), and modern Asian newts (*Cynops, Pachytriton,* and *Paramesotriton*). New World newts, which include *Notophthalmus,* originally evolved from salamandrids migrating from Europe to North America via the North Atlantic land bridge during the Mid-Late Eocene (Zhang *et al.* 2008, p. 595).

Another genetic study, conducted in 2010, looked at whether populations of *Notophthalmus perstriatus* that occur in two regions separated by 125 kilometers (km) (78 miles (mi)) exhibit genetic and ecological differentiation showing that these two regions are separate conservation units (Dodd *et al.* 2005, p. 887; Dodd and LaClaire 1995, p. 42; Franz and Smith 1999, p. 12; Johnson 2001, pp. 115–116; May *et al.* undated, unpublished report). One region consists of populations located in peninsular Florida and southeastern Georgia, and the other region consists of populations located in northwestern Florida and southwestern Georgia (Dodd and LaClaire 1995, p. 42; Franz and Smith 1999, p. 13). May *et al.* (2010, undated, unpublished report) found that there is gene flow between localities within each region, but none were shared between regions. Johnson (2001, pp. 107, 113–115) found genetic exchange between populations is minimal or nonexistent due to upland habitat fragmentation that has limited long-distance dispersals and restricted gene flow. In 2001, Johnson (2001, p. 115) found there was enough genetic divergence to show that the western region is different than the eastern regions. However, May *et al.* (2010, unpublished report) did not find that there was sufficient genetic divergence to support splitting eastern and western regions into separate species.

May *et al.* (2010, unpublished report) ran niche-based distribution models that showed that there were significant climatic and environmental differences between the two regions when considering temperature and precipitation. The western region is characterized by lower mean temperatures and more extreme winter cold, coupled with higher variation in temperature and precipitation. These differences in temperatures and precipitation between the regions should be considered if translocation between regions is to be used for conservation of this species. Understanding genetic structure and species ecology will ensure that genetically similar individuals are moved between areas with similar environmental conditions.

Life History and Biology

Life-history stages of the striped newt are complex, and include the use of both aquatic and terrestrial habitats throughout their life cycle. Striped newts are opportunistic feeders that prey on frog eggs, worms, snails, fairy shrimp, spiders, and insects (adult and larvae) that are of appropriate size (Dodd *et al.* 2005, p. 889; Christman and Franz 1973, pp. 134–135; Christman and Means 1992, pp. 62–63). Christman and Franz (1973, p. 135) found that newts were attracted to frog eggs by smell. Feeding behavior of newts has only been documented with aquatic adults; little is known of the feeding habits in the terrestrial stage (Dodd *et al.* 2005, p. 889).

Aquatic and breeding adults occur in isolated, temporary ponds associated with well-drained sands. Sexually mature adults migrate to these breeding ponds, which lack predatory fish, and courtship, copulation, and egg-laying take place there. Females lay eggs one at a time and attach them to aquatic vegetation or other objects in the water. It may take one female several months to lay all of her eggs (Johnson 2005, p. 94). Eggs hatch and develop into externally-gilled larvae in the temporary pond environment.

Once larvae reach a size suitable for metamorphosis, they may either undergo metamorphosis and exit the pond as immature, terrestrial efts, or remain in the pond and eventually mature into gilled, aquatic adults (paedomorphs) (Petranka 1998, pp. 449–450; Johnson 2005, p. 94). The immature, terrestrial efts migrate into the uplands where they mature into terrestrial adults. Efts will remain in the uplands until conditions are appropriate (adequate rainfall) to return to the ponds to reproduce. Johnson (2005, p. 94) found that 25 percent of larvae became paedomorphs at his study pond. Paedomorphs will postpone metamorphosis until after they have matured and reproduced. At about a year old, they will reproduce, metamorphose, and migrate into the uplands adjacent to the pond (Johnson 2005, pp. 94–95). Once there are proper conditions (*e.g.,* adequate rainfall) at the ponds, the terrestrial adults will move back to the ponds to court and reproduce. Once they return to the ponds, they are referred to as aquatic adults.

Striped newts as well as other *Notophthalmus* spp. have long lifespans (approximately 12 to 15 years) in order to cope with unfavorable stochastic environmental events (*e.g.,* drought) that can adversely affect reproduction (Dodd 1993b, p. 612; Dodd *et al.* 2005, p. 889; Wallace *et al.* 2009, p. 139).

Movement of striped newts by both emigration and immigration occurs between ponds and surrounding uplands. Adult newts immigrate into ponds from uplands during the fall and winter months, but some newts also immigrate during the spring and summer months as well, when environmental conditions (*e.g.,* adequate rainfall) are conducive to breeding (Johnson 2005, p. 95). Extended breeding periods allow striped newts to adapt to temporary breeding habitats whose conditions fluctuate within seasons (Johnson 2002, p. 395). Even with suitable water levels in ponds, adults emigrate back into uplands after breeding. There is a

staggered pattern of adult immigration into ponds and eft emigration into uplands due to the required 6 months for larvae to undergo metamorphosis into efts (Johnson 2002, p. 397).

Suitability of upland habitat around breeding ponds influences the pattern of immigration and emigration of newts and directional movements (Dodd 1996, p. 46; Dodd and Cade 1998, p. 337; Johnson 2003, p. 16). Dodd and Cade (1998, p. 337) found that striped newts migrated in a direction that favored high pine sandhill habitats. Newts migrate into terrestrial habitats at significant distances from their breeding ponds. Dodd (1996, p. 46) found that 82.9 percent of 12 wetland breeding amphibians (including striped newts) were captured 600 meters (m) (1,969 feet (ft)) from the nearest wetland, and only 28 percent of amphibians were captured less than 400 m (1,300 ft) from the wetland. Johnson (2003, p. 18) found that 16 percent of striped newts in his study migrated more than 500 m (1, 600 ft) from ponds. Dodd and Cade (1998, p. 337) showed that striped newts travelled up to 709 m (2,330 ft) from ponds. These long-distance movements of striped newts from breeding ponds to terrestrial habitats suggest that buffer zones around ponds should be established to protect upland habitats, as well as breeding ponds (Dodd 1996, p. 49; Dodd and Cade 1998, p. 337, Johnson 2003, p. 19; Kirkman *et al.* 1999, p. 557; Semlitsch and Bodie 2003, p. 1219). Trenham and Shaffer (2005, p. 1166) found that protecting at least 600 m (2,000 ft) of upland habitat would maintain a population with only a 10 percent reduction in mean population size in the California tiger salamander (*Ambystoma californiense*). Dodd and Cade (1998, p. 337) suggested that terrestrial buffer zones need to consider both distance and direction (migratory patterns) when created. Johnson (2003, p. 19) recommended a protected area extending 1,000 m (3,300 ft) from a breeding site as upland "core habitat" surrounding breeding ponds.

Optimal pond hydrology is important for maintaining the complex life-history pathways of striped newts. If there is not enough water in ephemeral ponds, then larvae will not have enough time to reach the minimum size needed for metamorphosis and will die as ponds dry up (Johnson 2002, p. 398). However, permanent ponds could support predatory fish that feed on aquatic-breeding amphibians (Johnson 2005, p. 94; Moler and Franz 1987, p. 235). Variable hydroperiods in breeding ponds over a long time period could result in varying reproductive success. Dodd (1993, p. 610) found a decline in striped newts due to persistent drought conditions. Johnson (2002, p. 399) found that heavy rainfall in the winter of 1997 to spring of 1998 filled ponds to their maximum depth and contributed to the reproductive success at these ponds. At one breeding pond, a minimum hydro-period of 139 days (Dodd 1993, pp. 609–610) was needed for larvae to reach complete metamorphosis. Larvae undergo metamorphosis into efts after a period of 6 months, and in order for larvae to mature into paedomorphs, a breeding pond must hold water for at least a year (Johnson 2005, p. 94). For a paedormorph to successfully reproduce, ponds must hold water for an additional 6 months to allow sufficient time for its larvae to undergo metamorphosis.

Striped newts form metapopulations that persist in isolated fragments of longleaf pine-wiregrass ecosystems (Johnson 2001, p. 114; Johnson 2005, p. 95). Within metapopulations, ponds function as focal points for local breeding populations that experience periods of extirpation and recolonization through time (*e.g.,* "ponds as patches") (Johnson 2005, p. 95; Marsh and Trenham 2001, p. 41). Striped newts typically have limited dispersal, which can lead to pond isolation when stochastic events (*e.g.,* drought) affect rates of colonization and extinction (Marsh and Trenham 2001, p. 41). In order for striped newts to recolonize local breeding ponds within the metapopulation, newts must disperse through contiguous upland habitat (Dodd and Johnson 2007, p. 150). Protecting the connectivity between uplands and breeding ponds of diverse hydroperiods is crucial for maintaining metapopulations (Dodd and Johnson 2007, pp. 150–151; Gibbs 1993, p. 25; Johnson 2005, p. 95). Only a few "stronghold" locations exist, where there are multiple breeding ponds with appropriate upland habitat that allow dispersal to occur among the ponds (Johnson 2005, p. 95). These "stronghold" locations represent different metapopulations across the range of the striped newt (Johnson 2005, p. 95). These sites need to be protected and managed to provide long-term protection for newts. In Florida, these include Apalachicola National Forest, Ocala National Forest, Jennings State Forest, Katherine Ordway-Swisher Biological Station, and Camp Blanding Training Site. In Georgia, they are found at Joseph Jones Ecological Research Center and Fort Stewart Military Installation (Johnson 2005, p. 95; Stevenson 2000, p. 4).

Habitat

Ephemeral ponds are important components of upland habitat in the southeastern United States (LaClaire and Franz 1990, p. 9). Ephemeral ponds tend to be described as small (typically less than 5 hectares (ha) (12.4 acres (ac)), isolated wetlands with a cyclic nature of drying and refilling known as hydroperiods. Ephemeral ponds can hold water at various times throughout a year to allow for reproduction. Precipitation is the most important water source for ephemeral ponds (LaClaire and Franz 1990, p. 12). The cyclical nature of ephemeral ponds prevents predatory fish from inhabiting breeding ponds (Dodd and Charest 1988, pp. 87, 94; LaClaire and Franz 1990, p. 12; Moler and Franz 1987, p. 237). Ephemeral ponds are biologically unique, because they support diverse species that are different than species found in larger, more permanent wetlands or ponds (Moler and Franz 1987, pp. 234, 236; Kirkman *et al.* 1999, p. 553).

The frequency and duration of water in ephemeral ponds creates different zones of vegetation within ponds. One species, maidencane (*Panicum hemitomon*), has been found at ephemeral ponds where striped newts have been found, and seems be a good indicator of the extent of previous flooding in ponds (LaClaire 1995, p. 88; LaClaire and Franz 1990, p. 10). Persistence of maidencane helps to reduce the rate of oxidation of organic matter, reduce soil moisture loss, and inhibit growth and establishment of upland plant species (LaClaire 1995, p. 94). The center of flooded ponds may contain floating-leaved plants, and is surrounded by vegetation with submerged roots growing along the wet edges. Surrounding the wet areas are tall and short emergents, such as sedges, grasses, and rushes such as sandweed (*Hypericum fasciculatum*), followed by other grasses such as bluestem grass (*Andropogon virginicus*) found in the drier margins of ponds. Water-tolerant shrubs or trees are found in some transitional zones between pond and uplands (LaClaire 1995, p. 74; LaClaire and Franz 1990, p. 10).

Ephemeral ponds are surrounded by upland habitats of high pine, scrubby flatwoods, and scrub (Christman and Means, 1992, p. 62). Longleaf pine-turkey oak stands with intact ground cover containing wiregrass (*Aristida beyrichiana*) are the preferred upland habitat for striped newts, followed by scrub, then flatwoods (K. Enge, Florida Fish and Wildlife Conservation

Commission, personal communication, May 24, 2010).

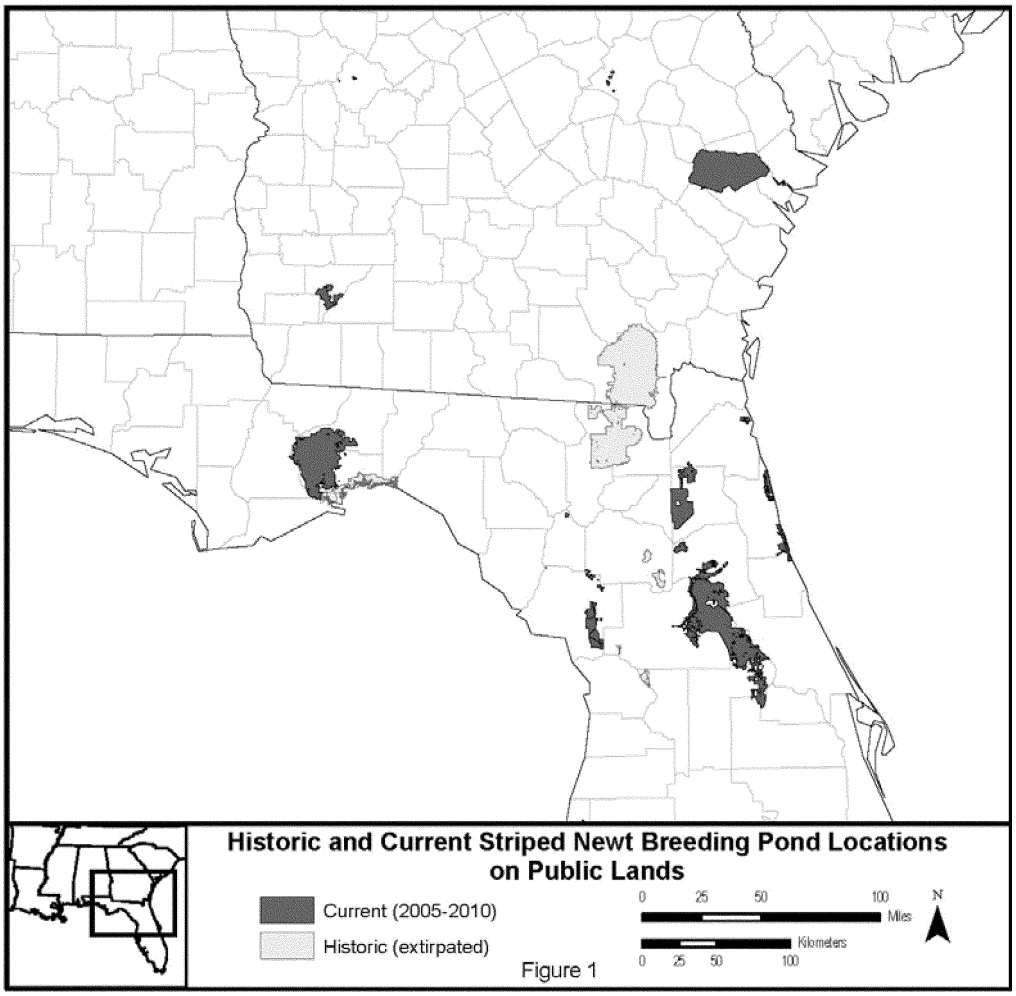
Striped newt habitat is fire-dependent, and naturally ignited fires and prescribed burning maintain an open canopy and reduce forest floor litter. An open canopy provides sunlight necessary for ground cover growth needed by newts for foraging and sheltering. Fire is also an important factor for wetland vegetation (LaClaire and Franz 1990, p. 10; Means 2008, p. 4). Historically, fire would be naturally ignited in the uplands during the late spring and early summer, and would sweep through the dry pond basins, reducing organic matter and killing encroaching upland plant species (Means 2008, p. 4; Myer 1990, p. 189). Lack of fire in uplands that buffer breeding ponds allows fire-intolerant hardwoods to shade out herbaceous understory needed by striped newts for foraging and sheltering. As a result, fire shadows may form along the upslope wetland and upland boundary. The vegetation in this area contains fire-intolerant evergreen shrubs (*Ilex* spp., *Vaccinium* spp., *Myrica* spp., and *Ceratiola* spp.) and sometimes xeric oak hammock zones (LaClaire and Franz 1990, p. 11). Ponds that are completely burned from the upland margin to the opposite margin lack this vegetation; however, if the ponds are filled with water, fire will burn out at the pond, and allow the invasion of fire-intolerant hardwoods (LaClaire and Franz 1990, p. 11). The impacts of fire on these temporary ponds promote species richness of grasses and sedges, especially during droughts (Means 2006, p. 196). To eliminate hardwood encroachment, a prescribed fire regime should be used every 1 to 3 years during May to June, in order to protect striped newt habitat (Means 2006, p. 196).

Striped newts use upland habitats that surround breeding ponds to complete their life cycle. Efts move from ponds to uplands where they mature into terrestrial adults. The uplands also provide habitat for the striped newt to forage and burrow during the non-breeding season (Dodd and Charest 1988, p. 95). Striped newts also use uplands to access alternative ponds that are needed if the original breeding pond is destroyed or the hydroperiod is altered (Means 2006, p. 197). This shows the interdependence between upland and aquatic habitats in the persistence of populations (Semlitsch and Bodie 2003, p. 1219). Semi-aquatic species (such as the striped newt) depend on both aquatic and upland habitats for various parts of their life cycle in order to maintain viable populations (Dodd and Cade 1998, pp. 336–337; Johnson 2001, p. 47; Semlitsch 1998, p. 1116; Semlitsch and Bodie 2003, p. 1219).

Distribution

The range of the striped newt extends from the Atlantic Coastal Plain of southeastern Georgia to the north-central peninsula of Florida and through the Florida panhandle into portions of southwest Georgia (Dodd *et al.* 2005, p. 887). There is a 125-km (78-mi) separation between the western and eastern portions of the striped newt's range (Dodd *et al.* 2005, p. 887; Dodd and LaClaire 1995, p. 42; Franz and Smith 1999, p. 12; Johnson 2001, pp. 115–116). The historical range of the striped newt was likely similar to the current range (Dodd *et al.* 2005, p. 887). However, loss of native longleaf habitat, fire suppression, and the natural patchy distribution of upland habitats used by striped newts have resulted in fragmentation of existing populations (Johnson and Owen 2005, p. 2).

In Figure 1, we provide a map illustrating the current and historical ranges of the striped newt on public lands. The dark-shaded areas represent the currently occupied sites documented from 2005 to 2010 surveys of public lands (Enge, FWC, personal communication, 2010; Jensen, Georgia Department of Natural Resources (GDNR), personal communication, 2010). The light-shaded areas represent the historical range where striped newts are now extirpated. There are from 1 to 30 breeding ponds documented within dark shaded areas. However, due to the scale of the map, the specific ponds are not identified. This map represents the best available information used to establish the species' range.



To determine where there may be additional unsurveyed suitable habitat for striped newts in Florida, Endries *et al.* (2009, pp. 45–46) developed a striped newt habitat model. The model was developed using Florida Fish and Wildlife Conservation Commission (FWC) 2003 landcover classes. Three classes were identified: (1) Breeding (bay, cypress swamp, freshwater marsh, wet prairie), (2) primary upland (sandhill, xeric oak scrub, sand pine scrub), and (3) secondary upland (hardwood hammocks and forests, pinelands, and shrub and brushlands). Then potential habitat was evaluated for each class. Breeding habitat was limited to patches that were less than 9 ha (22 ac) in size and which were contiguous with upland habitats. The primary upland habitats included in the model were those areas contiguous and within 1,000 m (3,300 ft) of breeding habitat. Secondary upland habitat was included for areas that were contiguous and within 500 m (1,600 ft) of primary uplands and 1,000 m (3,300 ft) of breeding habitat.

The GIS analysis found a total of 244,576 ha (604,360 ac) of potential habitat (Endries *et al.* 2009, p. 45). Of the potential habitat, 122,724 ha (303,257 ac) occurred on 124 sites within public lands, but only 64 of these sites had greater than 40 ha (100 ac) of potential habitat. The remaining habitat was found on privately owned lands in patches that were greater than 79 ha (195 ac) (Endries *et al.* 2008, pp. 45–46). Of the potential habitat found on public lands, 55 percent occurred on Ocala National Forest (ONF), 8 percent on Camp Blanding Military Installation, 6 percent on Withlacoochee State Forest, 5.3 percent on Apalachicola National Forest (ANF), and 2.9 percent on Jennings State Forest (Enge, FWC, personal communication, 2010). However, no records of striped newt occurrences have been found at Withlacoochee State Forest, even though this appears to be suitable habitat. Ocala National Forest has 67,514 ha (166,831 ac) of potential habitat and 39 occupied ponds, making it the largest "stronghold" for metapopulations for striped newts in Florida (Enge, FWC, personal communication, 2010). Striped newts are also found in ponds throughout Peninsular Florida at Ordway-Swisher Biological Station, Camp Blanding Joint Training Center, Jennings State Forest, Goethe State Forest, Rock Springs State Park, Ft. White Mitigation Park, Faver-Dykes State Park, and Pumpkin Hill Creek Preserve State Park.

Within the panhandle of Florida, striped newts have been found within the Munson Sandhills. This site represents a small physiographic region within the Gulf Coastal Plains in Florida (Means and Means 1998a, p. 3). Striped newts have only been located in the western portion of the Munson Sandhills within the ANF. No newts have been found in the eastern portion of the sandhills since the 1980s, when the area was converted to a dense sand pine (*Pinus clausa)* plantation (Means and Means 1998a, p. 6). Striped newt distribution continues north of this site to the Tallahassee Red Hills and Tifton Uplands, and finally to the Dougherty Plain in southwestern Georgia. However, the Tallahassee Red Hills no

longer support the newt. Striped newts were documented once in a breeding pond found in the Red Hills, but this site was dredged, deepened, and stocked with game fish in the 1980s, and no longer supports newts (Means and Means 1998b, pp. 6, 15).

The striped newt is currently known to occur in five separate locations in Georgia, including Fort Stewart, Lentile Property, Joseph W. Jones Ecological Research Center (JJERC), Fall Line Sandhills Natural Area, and Ohoopee Dunes Natural Area (J. Jensen, GDNR, personal communication, September 14, 2010; L. Smith, JJERC, personal communication, September 11, 2010; Stevenson 2000, p. 4; Stevenson and Cash 2008, p. 252; Stevenson *et al.* 2009a, pp. 2–3). Most of these locations are within the Dougherty Plain (Baker Co.), Tifton Uplands (Irwin, Lanier, and Lowndes Counties), and the Barrier Island Sequence (Bryan, Camden, Charlton, Evans, and Long Counties) (Dodd and LaClaire 1995, pp. 40–42). From 1993 to 1994, Dodd and LaClaire (1995, p. 40) found striped newts in one pond each at five sites in Irwin, Baker, and Charlton Counties, and a series of ponds at Ft. Stewart in Bryan and Evans Counties. A pond in Baker County at JJERC was found to be a new location, and extends the known range west of the Flint River approximately 115 km (71 mi) farther from the nearest recorded site (LaClaire *et al.* 1995, pp. 103–104; Franz and Smith 1999, p. 13). Striped newts were first found on Trail Ridge in 1924 near Okefenokee National Wildlife Refuge (ONWR), but this area has been highly modified since the 1940s (Dodd 1995, p. 44; Dodd and LaClaire 1995, pp. 39–40), and newts are no longer found in this area, except for possibly in the ONWR. In 2008, a new striped newt site was found in Georgia in Camden County, which is the first record for this county since 1953 (Stevenson *et al.* 2009b, p. 248).

Population Status and Trends

Surveys have been conducted for striped newts at many sites within Florida and Georgia. These surveys have found that the number of known occupied sites has declined and occupied sites are limited to just a few counties. However, historical information on the location of striped newts is difficult to confirm, as most of these sites underwent substantial land use changes since newts were first collected (Dodd *et al.* 2005, p. 887).

Franz and Smith (1999, p. 8) reviewed 100 records from 20 counties in Florida between 1922 and 1995, and conducted surveys between 1989 and 1995. They found that 4 historical ponds had newts, but also found 34 new ponds containing newts were that were not part of the historical records. All 38 breeding ponds were found on 7 public lands that included ANF, Camp Blanding Military Reservation, Favor-Dykes State Park, Jennings State Forest, Katharine Ordway Preserve-Swisher Memorial Sanctuary, ONF, and Rock Springs State Preserve (Franz and Smith, 1999, pp. 8–9).

Johnson and Owen (2005, p. 7) visited 51 sites in 11 counties in Florida from 2000 to 2003 that overlapped with the sites visited by Franz and Smith. They found that of 51 sites visited (totaling 64 ponds), only 26 ponds and adjacent upland habitat had excellent habitat quality (*e.g.,* multiple ephemeral ponds surrounded by fire-maintained native uplands) capable of supporting striped newts. Only 4 of these 26 sites had multiple breeding ponds needed to comprise metapopulations. They were found in Clay, Marion, and Putnam Counties in Camp Blanding Military Reservation (Clay), Jennings State Forest (Clay), Ocala National Forest (Marion), and Katherine Ordway Preserve-Swisher Memorial Sanctuary (Putnam) (Johnson and Owen 2005, p. 7).

From 2005 to 2010, Enge (FWC, personal communication, 2010) surveyed ponds in suitable habitat on 32 conservation lands in Florida. He found breeding ponds with newts in 58 ponds on 11 of the 32 conservation lands. He also found that although newts had a wider range in Florida than Georgia, they remained abundant only on public lands in Clay, Marion, and Putnam Counties. This is consistent with the surveys conducted by Franz and Smith (1999, pp. 8–9) and Johnson and Owen (2005, p. 7). He found that there were a total of 49 extant populations known from the peninsula of Florida and 7 populations from the panhandle. An isolated breeding pond farther than 1,000 m (3,300 ft) from the closest other breeding pond represents a separate population (Enge, FWC, personal communication, 2010). The striped newt metapopulations (*i.e.,* multiple breeding ponds with enough upland to allow for dispersal) are now only found on public lands in Clay, Putnam, and Marion Counties. Populations still exist in 10 other counties in Florida, but these counties have fewer than 3 breeding ponds and these populations are considered vulnerable to extirpation (Enge, FWC, personal communication, 2010).

The status of the striped newt is unknown on private lands due to the difficulty in accessing these lands; however, Enge (FWC, personal communication, 2010) was able to survey 8 ponds on 2 private lands, and found newts on at least one site.

Striped newt breeding ponds at ANF and other areas within the Munson Sandhills region in Leon County, Florida, have seen a decline. ANF was once considered a metapopulation for striped newt (Johnson 2005, p. 95; Johnson and Owen 2005, p. 7; Enge, FWC, personal communication, 2010). However, the western Munson Sandhills in ANF was surveyed from 1995–2007, and researchers were only able to locate 18 breeding ponds (containing larvae or breeding adults) in 265 ephemeral ponds surveyed (Means and Means 1998a, p. 5). Means *et al.* (2008, p. 6) found only 5 adult striped newts and no larvae in the past 10 years. Since 2000, severe drought conditions were experienced at these ponds, and newts were shown to be declining. Recent surveys conducted in the Munson Sandhills in 2010 were not able to locate any striped newts at any of the breeding ponds (Means, CPI, personal communication, 2010). The precipitous apparent declines now being seen at ANF could occur elsewhere on protected lands within the striped newt's range, despite the protection of habitat. This indicates that perhaps other threats (*e.g.,* disease and drought) may continue to act on the species at these sites.

As mentioned above, striped newts have only been found at five locations in Georgia, and these sites are highly fragmented and isolated (Stevenson 2000, p. 4). An amphibian survey on 196 ephemeral ponds in 17 counties on timber company lands in the Coastal Plain of southeastern Georgia did not locate any striped newts in Georgia; however, striped newts were found in four ponds in Florida (Wigley 1999, pp. 5–10). Stevenson (2000, p. 3) looked at 25 historic striped newt localities in Georgia and was only able to find 2 sites (8 percent) that had multiple breeding ponds and upland habitat that would support striped newt populations. As of 2010, only 2 properties in the State are known to support viable populations: JJERC and Fort Stewart Army Base (Jensen, GDNR, personal communication, 2010; Stevenson *et al.* 2009a, p. 2). The Fort Stewart population lies within the range of the eastern genetic group on the Atlantic Coastal Plain and was represented by approximately 10 known wetlands. Since 2002, striped newts have been found at only one wetland at Fort Stewart (Stevenson *et al.* 2009, p. 2). The JJERC population lies within the range of the western genetic group on the Gulf Coastal Plain, and is represented by 5 known wetlands. In

annual surveys from 2002 to 2010, researchers confirmed striped newts from only 3 of these 5 known wetlands (Smith, JJERC, personal communication, 2010). Evidence suggests that both the eastern and western striped newt populations in Georgia are rare and declining. Most suitable striped newt habitat in Georgia has been lost to development or converted to pine plantations and silviculture (Dodd and LaClaire 1995, p. 43).

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 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 educational 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 striped newt in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute 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.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Striped newts have been found to use both aquatic and upland habitats throughout their life cycle. Most of these habitats have been destroyed or modified in the past due to: (1) Conversion of habitat to intensely managed, planted pine plantations or naturally regenerated stands (Dodd 1995b, p. 129; Wear and Greis 2002, p. 46); (2) loss of habitat resulting from urban development (Zwick and Carr 2006, pp. 4–6); (3) degradation of habitat due to fire suppression (Means 2008, pp. 27–28); and (4) degradation of the habitat by the use of off-road vehicles and road construction (Means 1996, p. 2; Means 2001; p. 31, Means 2003 p. 6; Means *et al.* 1994a., pp. 5–6).

Natural Pine Forest Conversion

Natural pine forests (*i.e.,* longleaf pine forest) that once were found from southeastern Virginia through eastern Texas have declined to about 13 million ha (33 million ac), and planted pine plantations increased to more than 12 million ha (30 million ac) by 1999 (Dodd 1995b., p. 129; Wear and Greis 2002, p. 46). There are presently about 11 million ha (27 million ac) of managed pine plantations where natural longleaf pines were once found (Frost 2006, p. 36). Within the longleaf pine ecosystem in the South's coastal plains, only 2.2 percent of the original range exists (Frost 2006, p. 13; Wear and Greis 2002, p. 66). Between 1936 and 1989, longleaf pine forests within the range of the striped newt in Florida decreased from more than 3 million ha (7.6 million ac) to only 384,500 ha (950,000 ac), an 88 percent decrease (Dodd 1995b., p. 129). Longleaf pine forest in Georgia declined 36 percent between 1981 and 1988 (Dodd 1995b., p. 129).

Habitat loss from the conversion of natural pine forests to intensely managed, planted pine plantations has greatly disrupted the dispersal of striped newts between breeding ponds and upland habitat. Means and Means (1998a, p. 6) found that striped newt habitat at the Munson Sandhills varied due to differences in silvicultural practice between the eastern and western portions of the Sandhills. In the western portion of the Sandhills found within ANF, native groundcover remains in the second-growth longleaf pine forests, where striped newts spend most of their adult life. However, the eastern portion of the Munson Sandhills has been clear-cut and roller-chopped, and planted in sand pine (*Pinus clausa*), which is now a closed canopy with little native groundcover. Surveys of ponds located in the eastern Munson Sandhills found no striped newts after the site was converted to sand pine plantations (Means and Means 1998a, p. 4; Means and Means 2005, pp. 58–59; Means 2008, p. 30).

Silvicultural practices, including mechanical site preparation, pond ditching, soil disturbance, and the use of fertilizer and herbicides, can interfere with migration and successful reproduction (Dodd 1995b, p. 130; Dodd and LaClaire 1995, pp. 43–44; Means and Means 2005, pp. 59–60; Means 2008, p. 29). Pond ditching, which is used to drain ponds to create ideal conditions for silvicultural operations, is detrimental to striped newts, because it alters pond hydrology and facilitates predatory fish movement into otherwise fishless ponds (Means 2008, p. 30). Ditching creates a shortened hydroperiod, reducing the amount of time striped newts have to undergo metamorphosis, which can eventually decrease the number of reproducing adults (Means 2008, p. 31).

Urban Development

Alteration of upland habitat to urban development can create habitat fragmentation and loss of metapopulations of striped newts. In 10 coastal Georgia counties, the human population is expected to increase 51 percent by 2030 (Center for Quality Growth and Regional Development 2006, p. 4), but no estimate of impact on native habitats was provided. Striped newts have been found within 5 of these counties in Georgia, including Bryan, Camden, Long, Liberty, and Screven Counties (Franz and Smith 1999, p. 13, Stevenson 2000, pp. 6–7). Zwick and Carr (2006, pp. 4–6) modeled human population growth in Florida, and concluded that 2.8 million ha (7 million ac) of land will be converted to urban use by 2060. Of the 2.8 million ha (7 million ac), they estimated that about 1.1 million ha (2.7 million ac) of native habitat would be destroyed to accommodate urban development (Zwick and Carr 2006, p. 2). It is predicted that more than 800,000 ha (2 million ac) of native habitat in Florida will be developed by 2060 within a mile of public conservation lands (Zwick and Carr 2006, p. 19; FWC 2008, p. 8). Urban sprawl where newts occur will fragment striped newt ponds from upland habitats. This will limit movement of newts between breeding ponds and make them more vulnerable to extinction, as the genetic viability of the newts declines (FWC 2008, p. 8). Powerlines and natural gas rights-of-ways impact groundcover associated with longleaf pine adjacent to breeding ponds, creating barriers to dispersal and eventually decreasing populations (Means 2001, pp. 31–32). Striped newt habitat in the Tallahassee Red Hills has been impacted by urban sprawl and land conversion from 1824 to the

present, and has resulted in the extirpation of striped newts from this area (Means and Means 1998b, p. 8).

Small, isolated wetlands support breeding populations of striped newts. However, small, ephemeral wetlands (less than 0.2 ha (0.5 ac)) receive no protection from development (Johnson 2003, p. 19; Dodd and Cade 1998, p. 337; see discussion under Factor D below). The loss of these small, ephemeral wetlands can potentially increase extinction rates of newts by limiting migration between ponds and corridors, thus decreasing recolonization of local populations (Gibbs 1993, pp. 25–26; LaClaire and Franz 1990, p. 13; Semlitsch and Bodie 1998, pp. 1131–1132). Green (2003, p. 341) concluded that pond-breeding amphibians, like striped newts, that have highly fluctuating populations and high frequencies of local extinctions are likely to be affected rapidly by habitat fragmentation. The loss of breeding ponds due to habitat destruction will reduce corridors and limit migration between the ponds and the uplands.

Prescribed Fire

Prescribed fire plays an important role in maintaining productive breeding ponds for striped newts (Kirkman *et al.* 1999, p. 556). Burning in dry ponds is also necessary to maintain the quality of vegetation needed for striped newts (Johnson 2005, p. 97). Fire suppression at many sites with newt breeding ponds has been concurrent with the conversion of uplands to pine plantations (Johnson 2005, p. 97). Lack of fire can result in the succession of natural pine forests converting to fire-intolerant species, dominated by hardwoods (Means 2008, pp. 27–28). Wear and Greis (2002, pp. 46–47) found that 3.9 million ha (9.7 million ac) of natural pine forest throughout the Southeast were reclassified to hardwood and natural oak-pine forests. Of the remaining longleaf pine habitat in the southeast, only 0.2 percent is managed with fire and can support native longleaf pine species of plants and animals, including striped newts (Frost 2006, p. 38). The succession of natural pine forest to more shade-tolerant species, such as oaks and hickories, can result in the loss of ground cover, such as wire grass, needed by striped newts for shelter and foraging (Means 2001, p. 31). Frequencies of prescribed burns in these uplands need to take place in a 1- to 3-year cycle to provide suitable habitat for striped newts (Johnson and Gjerstad 2006, pp. 287–292). This would also reduce the naturally woody components around the ephemeral ponds, and stimulate flowering of grasses used by the newts along the pond margins (Means 2006, p. 196).

In Florida, some public land managers do not currently have the resources to implement effective habitat management programs (Howell *et al.* 2003, p.10). In a questionnaire to State, Federal, and local land managers throughout Florida, the Service asked what impediments they had in effectively using prescribed fire to manage scrub, a fire-maintained ecosystem. Many respondents indicated that funding, staff, and smoke management issues substantially reduced their ability to burn (Service 2006, Excel spreadsheet; Thomson 2010, p. 12). Less than 25 percent of public land managers had been ranked as having an excellent prescribed burn program (Florida Department of Environmental Protection 2007, p. 1). On most public lands in Florida, striped newt habitat is likely to continue to degrade unless land management funding and staffing increase in the future.

Off-Road Vehicles and Road Impacts

Means *et al.* (1994, pp. 6–7; 2008, pp. 11 and 16) found that their study ponds at the Munson Sandhills in ANF off-road vehicle (ORV) use had degraded the littoral zone of the breeding ponds into barren sandy beaches unsuitable for striped newts. The littoral zone provides shallow, warm water where small aquatic invertebrates are concentrated, providing food for newts. ORV use also destroys the grasses and grass-like vegetation around the ponds needed by newts for protection from predators such as wading birds (Means *et al.* 2008, p. 11). In 1994, 27 of 100 ponds at ANF were found to be damaged by ORV use, including 3 of 18 striped newt ponds (Means *et al.* 1994, pp. 6–7). By 2006, ORV impacts were documented at nearly every pond at ANF (Means *et al.* 2008, p. 16). However, by 2010, the ANF closed the Munson Sandhills to ORV use to protect the striped newt ponds (Petrick, USFS, personal communication, 2010; see discussion under Factor D below).

Striped newts dispersing from breeding ponds to upland habitat are also impacted by roads and highways. These impacts usually result in direct road mortality; desiccation of small, moist-bodied animals (like newts) on dry asphalt; and increased exposure of these small animals to aerial predation (Means 1996, p. 2). At one study pond in ANF, Means (2003, p. 6) found that most striped newts were emigrating and immigrating to and from the breeding pond across a major highway, U.S. 319.

Summary of Factor A

We have identified a number of threats to striped newt habitat that have resulted in the destruction and modification of habitat in the past, are continuing to threaten habitat now, and are expected to continue to threaten striped newt habitat in the future. Indications are that the loss of habitat due to conversion of natural pine forests to more intense silvicultural management regimes will continue in interior portions of the range of the striped newt. Striped newt habitat within the species' range in Florida and Georgia is currently threatened with habitat loss and modification resulting from urban development. Habitat loss and fragmentation due to urban development and road construction is expected to continue in the future. Lack of, or inappropriate use of, prescribed fire is ongoing and likely to continue in the future, and has adverse effects on striped newt habitat and extant populations. On the basis of this analysis, we find that the destruction, modification, or curtailment of the striped newt's habitat is currently a threat and is expected to persist and possibly escalate in the future. Because this threat is ongoing and we expect it will continue over the coming decades; we consider the threat to be imminent. However, based on the large amount of potential habitat that is currently in public ownership, and fact that most of the known striped newt ponds are on conservation lands, we believe the magnitude of this threat is moderate. Based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an imminent threat of moderate magnitude to the striped newt, both now and in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition provided information that striped newts were collected and sold during the 1970s and 1980s. However, in our 90-day finding (75 FR 13720, March 23, 2010), we determined that there was no evidence to support the existence of any threat under this factor. We obtained no additional information during the status review to indicate that this factor is currently a threat to the species or will become a threat in the foreseeable future. Therefore, based on our review of the best available scientific and commercial information, we conclude that the striped newt is not threatened by

overutilization for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

Factor C. Disease or Predation

In our 90-day finding (75 FR 13720, March 23, 2010), we found no evidence that predation was a threat to the striped newt, and we obtained no additional information during the status review that would change that finding. As to disease, below we summarize what was previously stated in the 90-day finding (75 FR 13720, March 23, 2010), as well as additional information obtained during the status review.

Disease can be difficult to detect in pond-breeding amphibians. In addition, the rarity of striped newts increases the difficulty of documenting mortality in the species. However, there are reasons to believe that disease may be a possible factor in the decline of striped newts. Chytridiomycosis (a disease caused by *Batrachochytrium dendrobatidis*) is implicated or documented as a causative agent in many New World amphibian declines (Blaustein and Johnson 2003, p. 91). Ouellet *et al.* (2005, p. 1434) documented the chytrid fungal infections in the eastern newts (*N. viridescens*) in North America. A subspecies of the eastern newt, the central or common newt (*N. v. louisanensis*), has been found in the same ponds as the striped newt at ANF and other ponds in North Florida (Means 2007, p. 19; Means 2001, pp. 19–21; Means *et al.* 1994, pp. 9–10 and 30–32). The effect of the disease on striped newts is unknown; however, California newts (*Taricha torosa*) have tested positive for the pathogen in ponds where a die-off of the species was previously reported (Padgett-Flohr and Longcore 2007, p. 177).

Some researchers believe that disease pathogens represent one of the potential causes of decline of the striped newt (Blaustein and Johnson 2003, pp. 87–92). The presence of chytrid fungal infections could particularly threaten populations of striped newts, as they may not have the resiliency to recover after a population crash caused by this disease (Ouellet *et al.* 2005, p. 1437). Further, the effect of this disease could be exacerbated by other stressors, such as habitat degradation and climate change (Blaustein and Johnson 2003, p. 91; Ouellet *et al.* 2005, p. 1432; Rothermel *et al.* 2008, pp. 3, 13). Daszak *et al.* (2005, p. 3236) found that the impact of *Batrachochytrium dendrobatidis* on amphibians can vary among species, and several factors, such as climate (*i.e.,* drought) and life-history traits, can affect the species' response to the disease. The presence of this disease in the range of the striped newt is not confirmed, but is a potential cause for concern, given the deleterious effect of the disease on other amphibian species.

A group of viruses belonging to the genus *Ranavirus* has been shown to affect some local populations and cause localized die-offs of amphibians (Gray *et al.* 2009a, p. 244). The *Ranavirus* could be affecting populations of the striped newt, but it is difficult to detect in less abundant species (Gray *et al.* 2009a, p. 244), and we do not have confirmation that it is present in striped newt populations. However, Green *et al.* (2002, p. 334) found that *Ranavirus* was the most frequent cause of amphibian mortality in at least 10 species, including the spotted salamander (*Ambystoma maculatum*) and eastern newt, so this virus may be impacting striped newt populations in breeding ponds where other subspecies of eastern newts, such as the central newt (*Notophthalmus viridescens louisianensis*), are found. There are two reasons for the emergence of *Ranavirus* in amphibian populations: (1) Reduced amphibian immunity associated with increased occurrence of anthropogenic stressors (*e.g.* drought), and (2) introduction of *Ranavirus* strains into amphibian populations by humans (Gray *et al.* 2009b, p. 2).

Another recently described disease, caused by a fungus-like protist (*Amphibiocystidium viridescens*), has been reported in eastern newt populations (Raffel *et al.* 2008, p. 204). Specifically, evidence of mortality and morbidity due to infection with this disease, and the potential importance of secondary infections as a source of mortality, were reported (Raffel *et al.* 2008, p. 204). Also, Cook (2008) found a striped newt in captivity to be infected with a protistan parasite that has caused disease in other species of amphibians. This parasite, currently identified as *Demomycoides* spp. (Cook 2007, p. 2), caused disease resulting in a complete loss of recruitment of the Mississippi gopher frog population in Harrison County, Mississippi, in 2003.

Summary of Factor C

We have found that several of the diseases mentioned above have resulted in mortality of species similar to the striped newt, such as the eastern newt (which is in the same genus as the striped newt). Drought conditions are predicted to be more severe and longer in the coming years. As drought (see discussion under Factor E below) and loss of habitat (see discussion under Factor A above) continue to act as stressors, striped newt populations may become more susceptible to disease outbreaks, which could potentially result in some localized population extinctions, as has occurred with similar species. Because, from the best available information, we do not know if disease is currently affecting the striped newt populations, but we believe it is likely that it will in the coming decades, we consider this threat to be nonimminent. Since disease has resulted in loss to similar amphibian species, and additional stressors (*e.g.,* habitat loss, drought, and climate change) might make some populations of striped newts more vulnerable to disease, the magnitude of this threat is moderate. Based upon our review of the best commercial and scientific data available, we conclude that disease is a nonimminent threat of moderate magnitude to the striped newt within the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

There is currently little Federal and State protection of isolated wetland habitat and surrounding upland habitats. While many States in the southeastern United States regulate those activities affecting wetlands that are exempt from section 404 of the Federal Clean Water Act (CWA) (33 U.S.C.1251 *et seq.*), Florida is the only State known to regulate isolated wetlands. In Georgia, there are no State laws that protect isolated wetlands. Lack of protection for upland habitat under wetland statutes can result in loss of recruitment of efts and paedomorphs into the breeding adult population, which would reduce the potential for the population to persist (Semlitsch 1998, p. 1116).

Federal Statutes and Regulations

The CWA regulates the dredge and fill activities that adversely affect wetlands. Section 404 of CWA regulates the discharge of dredge or fill materials into wetlands. Discharges are commonly associated with projects to create dry land for development sites, water-control projects, and land clearing. The U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share the responsibility for implementing the permitting program under section 404 of the CWA. EPA and COE provided a guidance memorandum for implementing recent court cases addressing jurisdiction over waters of the United States under the CWA, specifically addressing the term "navigable waters" (EPA and COE 2001, pp. 1–7; EPA and COE 2008, pp. 1–13). It is clear from this guidance that isolated wetlands are not considered

waters of the United States under the "navigable waters" definition and thus are not provided protection under the CWA. Further wetland regulations are reviewed by the COE for the development of wetlands less than 1.2 ha (3 ac) under a permit called Nationwide Permit 26 (Kirkman *et al.* 1999, p. 553; Snodgrass *et al.* 2000, p. 415).

The Department of the Interior, through the Service, administers the National Wildlife Refuge System. The National Wildlife Refuge System Administration Act of 1966 (NWRAA; 16 U.S.C. 668dd–668ee) provides legislation for the administration of a national network of lands and water for the conservation, management, and restoration of fish, wildlife, and plant resources and their habitats for the benefit of the American people. Amendment of the NWRAA in 1997 requires the refuge system to ensure that the biological integrity, diversity, and environmental health of refuges be maintained and requires development and implementation of a comprehensive conservation plan (CCP) for each refuge. The CCP must identify and describe the wildlife and related habitats in the refuge and actions needed to correct significant problems that may adversely affect wildlife populations and habitat (16 U.S.C. 668dd(e)). Striped newt habitat within national wildlife refuges is protected from loss due to urban development. Striped newts have historically been observed at St. Marks National Wildlife Refuge (SMNWR) in Florida and Okefenokee National Wildlife Refuge (ONWR) in Georgia. Striped newts were historically found at ONWR in the 1920s, but the only known breeding pond was last occupied by newts in 1994. Aicher (ONWR, personal communication, September 14, 2010) has not found striped newts at ONWR, even though this breeding pond is still in good condition with well-maintained uplands surrounding it. At SMNWR, surveys conducted in 2002–2005 and again in 2009 were not able to locate any newts at 34 ponds (Enge, FWC, personal communication, 2010; Dodd *et al.* 2007, p. 29). The last known observation was in 1978, but now the habitat appears to be too degraded to be suitable for striped newts due to the lack of fire. Striped newts may indirectly benefit from fire management programs intended to maintain and restore habitat for species such as the red cockaded woodpecker (*Picoides borealis*) and gopher tortoise (*Gopherus polyphemus*), but no systematic monitoring programs are in place to evaluate striped newt responses to land management activities within the refuge system.

On military installations, the Department of Defense (DOD) must conserve and maintain native ecosystems, viable wildlife populations, Federal and State listed species, and habitats as vital elements of its natural resource management programs, to the extent these requirements are consistent with the military mission (DOD Instruction 4715.3). Amendments to the Sikes Act (16 U.S.C. 670 *et seq.*) require each military department to prepare and implement an integrated natural resources management plan (INRMP) for each installation under its jurisdiction. The INRMP must be prepared in cooperation with the Service and State fish and wildlife agencies, and must reflect the mutual agreement of these parties concerning conservation, protection, and management of wildlife resources (16 U.S.C. 670a). Each INRMP must provide for wildlife, land and forest management, wildlife-oriented recreation, wildlife habitat enhancement, wetland protection, sustainable public use of natural resources that are not inconsistent with the needs of wildlife resources, and enforcement of natural resource laws (16 U.S.C 670a). DOD regulations mandate that resources and expertise needed to establish and implement an integrated natural resources management program are maintained (DOD Instruction 4715.3). These regulations further define the INRMP requirements, and mandate that plans be revised every 5 years and that they ensure the military lands suitable for management of wildlife are actually managed to conserve wildlife resources (DOD Instruction 4715.3).

The effectiveness of individual INRMPs to protect striped newts vary between and within military departments. Because the striped newt is not a protected species in Florida, the INRMP for Camp Blanding Military Installation does not specifically address management programs for this species. However, management activities that benefit the red-cockaded woodpecker and gopher tortoise, such as prescribed burning, should also benefit the striped newt. The striped newt is listed as threatened by the State of Georgia, so the INRMP for Fort Stewart Range and Garrison does address the specific conservation and management of this species.

The Navy does incorporate protective ecosystem management into INRMPs for Naval Air Station Jacksonville (and associated Rodman Bombing Range, Pinecastle Range, and Outlying Landing Field Whitehouse), Naval Station Mayport, and Naval Submarine Base Kings Bay. However, the INRMPs do not include specific management measures for the striped newt.

The Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 36),of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), requires that each national forest be managed under a forest plan which must be revised every 10 years. Regulations governing preparation of forest plans are found in 36 CFR 219. The purpose of a forest plan is to provide an integrated framework for analyzing and approving future, site-specific projects and programs, including conservation of listed species. Identification and implementation of land management and conservation measures to benefit striped newts vary between forests. For example, on the National Forests in Florida, striped newts are not designated as a species for which special management prescriptions are implemented. There are no specific land management objectives for striped newts on the National Forests in Florida. The Land and Resource Management Plan for the National Forests in Florida (U.S. Forest Service 1999, entire) provides for the restoration of longleaf pine forest through various management areas located at Apalachicola National Forest (ANF) and Ocala National Forest (ONF). Metapopulations of striped newts are found at both of these forests. However, a decline of striped newt populations at ANF has occurred over the past 10 years (Means *et al.* 2008, p. 6).

State Statutes and Regulations

Generally, State statutes and regulations protect striped newts from take, but the effectiveness and implementation of regulations vary between States. The striped newt is not currently a State-listed species in Florida. However, the ephemeral ponds in Florida have some protection under Florida State regulations. The five Water Management Districts (WMDs) and the Florida Department of Environmental Protection (FDEP) regulate wetland protection. The WMDs include isolated wetlands in the Environmental Resource Permit process, which requires a permit for any activities that would impact a wetland (SJRWMD 2010, p. 1). Under the WMDs permitting process, mitigation for impacts to wetlands below a minimum permitting threshold size of 0.2 ha (0.5 ac) is not addressed unless the wetland supports an endangered or threatened species, is connected by standing or flowing surface water at seasonal high water level to one or more wetlands that total

more than 0.2 ha (0.5 ac), or is of more than minimal value to fish and wildlife (SJRWMD 2010, p. 1). This minimum permitting threshold size was adopted by the WMD, "based on consensus of scientific and regulatory opinions rather than on biological and hydrological evidence" (Hart and Newman 1995, p. 4). However, under Florida Statue Title XXVIII Chapter 371.406, agriculture (which includes silviculture) has exemptions to alter topography unless it is for the sole purpose of impounding or obstructing surface waters.

The size of the wetland is primarily how the State of Florida and the COE address wetland regulations. Snodgrass *et al.* (2000, p. 415) found that wetland values were based on four assumptions: (1) That small wetlands are ephemeral; (2) because wetlands are ephemeral, they support few species; (3) species supported by small wetlands are also found in large wetlands; and (4) populations found in individual wetlands are independent from other wetlands. Snodgrass *et al.* (2000 p. 219) concluded that these assumptions are not accurate and that there is no relationship between wetland size and species richness. Instead, wetland regulations should include a diversity of hydroperiods and connectedness of wetlands (Snodgrass *et al.* 2000, p. 219). Protecting these small wetlands will help maintain biodiversity with respect to the number of plant, invertebrate, and vertebrate species, including striped newts (Moler and Franz 1987, pp. 236–237). The loss of these small, ephemeral wetlands changes the metapopulation dynamics of striped newts by reducing the number of individuals that can disperse and reproduce successfully, and by increasing the dispersal distance among wetlands (Semlitsch and Bodie 1998, p. 1131). The reduction in wetland densities decreases the probability that populations can be recovered by adjacent source populations, due to greater distances between wetlands, which eventually leads to population extinctions (Gibbs 1993, pp. 25–26; Semlitsch and Bodie 1998, pp. 1131–1132). This makes it important to not only consider local and regional wetland distribution in wetland regulations, but also the protection of the surrounding non-breeding uplands, in which the newts complete their metamorphosis from efts to adults, and from which the adults emigrate back to the breeding ponds.

In Georgia, a State statute requires that any rule and regulation promulgated for protected species (including the striped newt) shall not affect rights on private property or in public or private streams, nor shall such rules and regulations impede construction of any type (Ga. Code Ann. section 27–3–132(b)). Georgia's Endangered Wildlife Act of 1973 establishes statutory protection for protected species (Ga. Code Ann. section 27–3–130–133). Georgia Board of Natural Resources Rule (Chapter 391–4–10) mirrors the statue, but includes permitting for research under a scientific collecting permit (Ga. Code Ann. section 27–2–12). Any implementing regulations are constrained by these statutory requirements, and therefore can only prohibit collection, killing, or selling of individual newts. There are no regulatory or permitting mechanisms in place in Georgia to address habitat destruction or striped newt mortality resulting from development projects on private lands. Consequently, striped newts and their habitat in private ownership in Georgia are vulnerable to ongoing and future habitat loss and mortality.

Local Laws and Ordinances

Florida's State Comprehensive Plan and Growth Management Act of 1985 (F.A.C. 163 Part II) requires each county to develop local comprehensive planning documents. Comprehensive plans contain policy statements and natural resource protection objectives, including protection of State and federally listed species, but they are only effective if counties develop, implement, and enforce ordinances. Some Florida county governments have developed protective ordinances for State and federally listed species, but all such ordinances are based on compliance with the State or Federal law, rather than enacting more stringent local laws. Consequently, Florida's local governments provide no additional protection to striped newts. We are aware of no county or local regulations or ordinances that protect the striped newt beyond existing State law in Georgia.

Conservation Efforts To Increase Adequacy of Existing Regulations

As we indicated above, the inadequacies of existing regulations are inextricably linked to threats associated with the present or threatened destruction, modification, or curtailment of the striped newt's habitat or range, explained under Factor A above. However, the U.S. Forest Service (USFS) has now restricted or closed ORV use in sensitive biological communities, such as wetlands (USFS 2010, p. 1), at both ANF and ONF. ORVs have historically been a recurring issue in or around ponds at ANF and ONF. However, recent changes at ANF and ONF have made ORVs off-limits in the Munson Sandhills and the ephemeral ponds in the ONF where striped newt ponds were being affected by ORV use (Petrick, USFS, personal communication, 2006).

Summary of Factor D

Current Federal, State, and local regulations do not protect the vast majority of striped newts or their habitat on private lands. In Georgia, striped newt populations on private lands are not protected under State regulations, even though the striped newt is listed as threatened in that State. The status of striped newts on private lands is unknown, but is likely threatened by ongoing land uses, such as development and silviculture. Regulatory mechanisms at the local, State, and Federal levels provide varying degrees of protection to wetlands, but do not protect the small, ephemeral wetlands that striped newts use for breeding sites. Many regulations do not address management needs of the striped newt. We find that existing regulatory mechanisms are insufficient to reduce or remove threats to striped newts on public and private lands, including wetlands that may support striped newt populations, and we therefore find that the inadequacy of existing regulatory mechanisms is an imminent threat to this species throughout all of its range, as it is occurring now and not expected to change in the near future. This threat is pervasive throughout the species' entire range, so the magnitude of this threat is moderate. Therefore, based on our review of the best available scientific and commercial information, we conclude that the inadequacy of existing regulatory mechanisms is an imminent threat of moderate magnitude to the striped newt, both now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The effects of a long-term drought have contributed to the decline of striped newts from breeding ponds at not only the Munson Sandhills of the ANF in Florida, but at breeding sites throughout Florida and Georgia. Droughts normally occur in cycles and amphibian populations fluctuate with drought conditions (Dodd 1992, pp. 138–139). However, droughts lasting several years (more than 4) were found to have affected reproductive success, resulting in population decline (Dodd 1992, p. 139; Dodd and Johnson 2007, p. 150; Petranka 1998, p. 450). Surveys conducted at the Camp Blanding

Training Site in 2000 to 2001, during a drought, did not find any striped newts, due to dry breeding ponds. In previous years, surveys found 7 to 10 sites with newts (Gregory *et al.* 2006, p. 487). Striped newts will respond to drought conditions in several ways: (1) Temporary extirpation; (2) migration to adjacent areas with better habitat conditions; and (3) survival in upland habitat, with recolonization once water has returned (Dodd 1993, p. 612).

Even with the return of water at the Munson Sandhills in ANF, striped newt populations have not recovered (Means, CPI, personal communication, 2010). Although droughts are a naturally occurring event in the ecology of the striped newt, prolonged droughts can worsen threats to already small populations, and exacerbate the degradation and fragmentation of striped newt habitat that is already taking place (discussed under Factor A above), leading to extinction of striped newts in many areas.

We expect climate change will result in the loss and degradation of striped newt habitat in the future, particularly in Florida. According to the Intergovernmental Panel on Climate Change Synthesis Report (IPCC 2007, p. 2), warming of the earth's climate is "unequivocal," as is now evident from observations of increases in average global air and ocean temperatures, widespread melting of snow and ice, and rising sea level. Temperatures are predicted to rise from 2.0 degrees Celsius (°C) to 5.0 °C (3.6 degrees Fahrenheit (°F) to 9.0 °F) for North America by the end of this century (IPCC 2007, p. 9). The IPCC (2007, pp. 2, 6) report outlines several scenarios that are virtually certain or very likely to occur in the next 50 years, including: (1) Over most land, there will be fewer cold days and nights, and warmer and more frequent hot days and nights; (2) Areas affected by drought will increase; and (3) The frequency of heavy precipitation events over most land areas will likely increase. The Southeastern United States is predicted to experience more severe and longer droughts. Other processes to be affected by this projected warming include rainfall (amount, seasonal timing, and distribution), storms (frequency and intensity), and sea level rise.

Indirect impacts are expected due to the relocation of people from flood-prone urban areas to inland areas (Ruppert *et al.* 2008, p. 127), including the relocation of millions of people to currently undeveloped interior natural areas (Stanton and Ackerman 2007, p. 15). Others have proposed implementation of a large-scale systematic translocation of at-risk human populations to interior locations (Gilkey 2008, pp. 9–12). Florida's interior natural ecological communities will likely be impacted by the increasing need of urban infrastructure to support retreating coastal inhabitants. While available data are not adequately specific to evaluate the potential direct effects of predicted climate changes on the striped newt or provide information on just how much habitat may be lost, any habitat loss related to climate change would be in addition to the 20 percent loss projected to occur by 2060 due solely to people moving into Florida (FWC 2008, p. 2).

Summary of Factor E

We have identified that long-term droughts have resulted in the loss of striped newt breeding ponds, exacerbating existing population fluctuations and causing local extinctions. This threat is ongoing and is expected to continue in the future, especially because threats to habitat continue to affect existing striped newt populations and may make them more susceptible to potential population extinction. On the basis of this analysis, we find that the natural factor of long-term droughts is currently a threat and is expected to persist, and possibly escalate in the future, as a result of climate change, although climate change itself is not an imminent threat. Because we expect this threat will occur over the coming decades, we consider the threat to be imminent. Throughout the entire range of the striped newt, droughts are predicted to be more severe and longer in duration in the coming years, so we believe the magnitude of this threat is high. Based upon our review of the best commercial and scientific data available, we conclude that other natural or manmade factors affecting the species' continued existence is an imminent threat of high magnitude to the striped newt, both now and 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 striped newt 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 striped newt. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with striped newt experts and other Federal and State agencies.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute 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.

This status review identified threats to the striped newt attributable to Factors A, C, D, and E. The primary threats to the striped newt are habitat loss, disease, inadequate regulatory mechanisms, and drought. Habitat destruction and modification (Factor A) in the form of conversion of native longleaf pine forests to intensively managed pine forests and urban development are occurring on private lands throughout the range. Disease (Factor C) is expected to become more problematic for striped newts as additional habitat is lost and fragmentation increases. Stressors such as habitat loss (Factor A) and droughts (Factor E) are expected to elevate risks of diseases in newts because this has been the case with similar species. Regulatory mechanisms are inadequate to prevent further loss of breeding ponds (Factor D) throughout the striped newt's range. Existing regulations also do not protect striped newts on private lands in Florida and Georgia. Long-term regional droughts in Florida and Georgia (Factor E) have a negative impact on the long-term persistence of striped newts.

Since 2000, the striped newt has been monitored at 20 of the best breeding ponds on ANF (Means, CPILC, personal communication, 2010; Means and Means 1998a., pp. 9–25; Means *et al.* 1994, pp. 14–24; Means *et al.* 2008, p. 6). Since 2000, severe drought conditions were experienced at these ponds, and newts were shown to be declining. However, despite improving conditions at these ponds, no striped newts were located in 2010. The precipitous apparent declines now being seen at ANF could occur elsewhere on protected lands within the striped newt's range, despite the

protection of habitat. This suggests that perhaps other threats (*e.g.,* disease and drought) may continue to act on the species at these sites. Drought conditions are predicted to be more severe and longer in the coming years. As described under Factor C, drought and other factors continue to act as stressors on existing striped newt populations and may make them more susceptible to disease outbreaks and may result in the population extinction of some metapopulations. There has not been any evidence of disease at other large metapopulations, such as ONF.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the striped newt as endangered or threatened is warranted. We will make a determination on the status of the striped newt as endangered or threatened when we complete a proposed listing determination. However, 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 have 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 have determined that issuing an emergency regulation temporarily listing the striped newt is not warranted for this species at this time because there are no impending actions that might result in extinction of the species that would be addressed and alleviated by emergency listing, and the severity and timing of the threats are such that the risk of extinction will not occur over a short duration, or be caused by any one action. However, if at any time we determine that issuing an emergency regulation temporarily listing the striped newt is warranted, we will initiate this 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 (DPSes) of vertebrates). We assign the striped newt a Listing Priority Number (LPN) of 8, based on our determination that the primary threats are moderate and imminent. These threats include habitat destruction, disease, inadequate regulatory mechanisms, and droughts. Rationale for assigning the striped newt an LPN of 8 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. The primary threats to striped newt (*e.g.,* habitat loss, disease, inadequate regulatory mechanisms, and drought) are occurring in populations throughout the species' range. For Factor E, we consider the magnitude high because nearly all populations are affected, and this factor may lead to possible extirpation. Also, throughout the entire range of the striped newt, droughts are predicted to be more severe and longer in the coming years, which could have a detrimental effect on the species' long-term survival. With drought as a possible cause for the decline in the population at ANF, we predict that, with continued drought conditions, declines are likely to occur at other protected lands as well, with possible extirpation in those areas. We consider the magnitude for Factors A and C moderate, as most of the known striped newt metapopulations are on conservation lands, and, although disease has been found in similar species, no known metapopulations of striped newts have shown any evidence of disease. Existing regulatory mechanisms at the local, State, and Federal levels provide varying degrees of protection to wetlands, but do not protect the small, ephemeral wetlands striped newts use for breeding sites. The lack of regulatory protection has not prevented further loss of breeding ponds and adjacent upland habitat throughout the species' range. We consider this a threat that is moderate in magnitude. In sum, because we find that threats under three factors (A, C, and D) are moderate, we find the overall threats that the striped newt is facing to be moderate in magnitude.

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 the species that face actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. Factors A, D, and E are considered imminent because they are occurring now and are expected to continue to occur in the future. These actual, identifiable threats are covered in detail under the discussion of Factors A, D, and E of this finding. Because we find that threats under three factors (A, D, and E) are imminent, and the threat under one factor (C) to be nonimminent, we find the overall threats that the striped newt is facing to be imminent.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The striped newt is a valid taxon at the species level, and therefore receives a higher priority than subspecies or DPSes, but a lower priority than species in a monotypic genus. The striped newt faces mostly moderate magnitude, largely imminent threats, and is a valid taxon at the species level. Thus, in accordance with our LPN guidance, we have assigned the striped newt an LPN of 8.

We will continue to monitor the threats to the striped newt, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for the striped newt 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 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 not know if we will be able 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 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112–10) which provides funding through September 30, 2011. The Service has $22,103,000 for the listing program. 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 determinations 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 striped newt is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (*i.e.,* candidate species with LPNs of 1 to 7).

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 "warranted-but-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; see 76 FR 3029.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011. This progress includes 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 FR 77801–77817
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

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
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
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 and 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 13121–13122
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

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
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

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.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
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.
Bay skipper	90-day petition finding.
Spot-tailed earless lizard	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.
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.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
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 striped newt 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 striped newt 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 U.S. Fish and Wildlife Service, North Florida Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the North Florida Field Office.

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 3, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–13911 Filed 6–6–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 100218104–1291–01]

RIN 0648–AY27

Western Pacific Pelagic Fisheries; American Samoa Longline Gear Modifications To Reduce Turtle Interactions

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would require specific gear configuration for pelagic longline fishing for vessels based in American Samoa, as well as other U.S. longline vessels longer than 40 ft (12.2 m), while fishing south of the Equator in the Pacific Ocean. The requirements include minimum float line and branch line lengths, number of hooks between floats, and distances between floats and adjacent hooks. The rule would also limit the number of swordfish taken. The proposed action is intended to ensure that longline hooks are set at depths of 100 meters (m) or deeper to reduce interactions between longline fishing and Pacific green sea turtles.

DATES: Comments on the proposed rule must be received by July 22, 2011.

ADDRESSES: Comments on this proposed rule, identified by 0648–AY27, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;* or
- *Mail:* Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the above two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The Western Pacific Fishery Management Council (Council) prepared Amendment 5 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), including an environmental assessment, that presents background information on this proposed rule. The Pelagics FEP and Amendment 5 are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808–944–2248.

SUPPLEMENTARY INFORMATION: Longline fishing employs a mainline that is suspended below the surface by floats and float lines that are attached along

the mainline with clips. Branch lines, each with a single baited hook, are attached to the mainline. Longline deployment is typically referred to as "setting," and the gear, once it is deployed, is typically referred to as a "set." Once set, longline gear is left to fish for several hours, and brought back on board along with any catch.

The limited access program for the American Samoa pelagic longline fishery consists of four permit classes based on vessel length. The pelagic longline fishery targets albacore for canning in Pago Pago, American Samoa. The larger longline vessels (over 40 ft (12.2 m) that include Classes B, C, and D) set about 40 nm (75 km) of mainline with an average of about 3,000 hooks per day. This fishery has historically fished at depths from 50 to 300 m, or deeper. In 2009, 26 vessels based in American Samoa made 4,689 sets, and landed 8.6 million lb of albacore, and smaller amounts of skipjack, yellowfin, and bigeye tunas. Preliminary 2010 data show the number of sets and albacore landings were similar to 2009. The fishery also takes wahoo, oilfish, blue marlin, blue sharks, and other pelagic fish.

The smaller Class A (40 ft (12.2 m) and shorter) longline vessels, or alias, use manually-powered mainline drums that hold about four miles of monofilament line, and set around 300–350 hooks per set. These smaller vessels generally do not travel long distances from shore or carry large quantities of fish and, ordinarily conduct one- or two-day trips less than 50 nm (93 km) from shore. From 2008 to 2010, only one alia was actively longline fishing.

The American Samoa longline fishery is managed under a host of requirements, including a limited access program with a maximum of 60 vessels in all size classes, even though fewer than 30 have been active in recent years. Other requirements include Federal permits and logbooks and (for certain vessel size classes) observers and a satellite vessel monitoring system. Longline vessels and gear must be marked with their identification markings. Large longliners (50 ft and longer) may not fish within designated prohibited areas around the islands of American Samoa. Each year, owners and operators of American Samoa longline vessels must attend and be certified in a protected species workshop on identification, mitigation, handling, and release techniques for sea turtles, seabirds, and marine mammals. Fishermen must use specific equipment and techniques for handling and releasing any sea turtles that are hooked or entangled.

While many of the requirements noted above were established to reduce the number and severity of interactions with protected species, the American Samoa-based longline fishery has continued to interact with (hooked or entangled) Pacific green sea turtles (*Chelonia mydas*), which are listed as threatened under the Endangered Species Act (ESA). Most of the interactions are believed to have occurred in the shallowest 100 m of the water column, and most injuries to the sea turtles have been fatal. The NMFS observer program reported 13 green sea turtle interactions for the American Samoa longline fishery from June 2006 to July 2010. (Additional interactions have been observed since July 2010, but the details of these more recent interactions, such as hook depth, have not been analyzed, so they are not included here.) Nine of the turtles were hooked by the shallowest hooks (first three hooks from the float). Green sea turtles are known to mainly inhabit waters within 100 m of the ocean's surface, and it is expected that forcing hooks to fish at 100 m or deeper would result in fewer green sea turtle interactions.

In Amendment 5, dated May 12, 2011, the Council recommended that NMFS require American Samoa longline fishermen to use a suite of gear configurations designed to ensure that longline hooks are set to fish at least 100 m deep, away from the primary turtle habitat to reduce interactions. This proposed rule would implement the Council's recommendations. The proposed gear configuration requirements would apply to Class B, C, and D vessels (that is, vessels over 40 ft (12.2 m) in length). These vessels would be required to deploy float lines at least 30 m long, keep a minimum distance of 70 m between any float line and the closest branch line in either direction along the mainline, and attach at least 15 branch lines between any two float lines. These vessels would also be prohibited from possessing or landing more than ten (10) swordfish per trip. Because swordfish are typically caught in waters shallower than 100 m, limiting the number of swordfish that fishermen may retain is expected to ensure that gear is set to the required depth of 100 m or deeper, rather than shallower to target swordfish.

This proposed rule would also establish a gear configuration requirement that was not recommended in Amendment 5, rather in a September 16, 2010, Biological Opinion resulting from ESA section 7 consultation on the proposed action. The Biological Opinion requires each branch line (connected to the mainline and terminating in a single baited hook) to be at least 10 meters long to help ensure that hooks are set 100 m or deeper from the surface. Accordingly, this proposed rule would implement the Biological Opinion's additional requirement.

Class A vessels (40 ft (12.2 m) and shorter) are not included in this proposed action. There are few current data to suggest that longline fishing from these smaller vessels results in interactions with sea turtles. NMFS will continue to monitor fishing activities by these small vessels, and, in coordination with the Council, will consider appropriate conservation and management measures should evidence of sea turtle interactions be developed.

The gear configuration requirement would apply to U.S. longline vessels in the Pacific Ocean only south of the Equator (0° lat.) because different sets of requirements are in place to protect sea turtles in the Hawaii-based longline fisheries, which has operated primarily north of the Equator. Each of the three large-scale U.S. western Pacific longline fisheries (Hawaii deep-set, Hawaii shallow-set, and American Samoa) are monitored under separate sea turtle incidental take statements, and they each operate under different sets of regulations. To ensure efficient administration, uniform enforcement, and ease of understanding, NMFS would require the proposed gear configurations for all U.S. longline fishing south of the Equator in the Pacific Ocean. This proposed rule would also make administrative clarifications to the names of several tuna and marlin species caught in western Pacific pelagic fisheries. The English and scientific names of the bluefin tuna are revised from "Northern bluefin tuna, *Thunnus thynnus*" to "Pacific bluefin tuna, *Thunnus orientalis*." The English and scientific names of the blue marlin are revised from "Indo-Pacific blue marlin, *Makaira mazara*" to "Pacific blue marlin, *Makaira nigricans*." The scientific names of black marlin and striped marlin are revised to *Istiompax indica,* and *Kajikia audax,* respectively.

Public comments on this proposed rule must be received by close of business on July 22, 2011, not postmarked, or otherwise transmitted by that date to be considered. Late comments will not be accepted.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pelagics FEP, Amendment 5,

other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The proposed rule would require longline fishermen to configure their gear to ensure that longline hooks are set to fish at least 100 meters (m) deep, away from the primary turtle habitat. The proposed measures would require fishermen on vessels longer than 40 ft to use float lines that are at least 30 m long, and maintain at least 70 m of mainline without hooks between float lines and adjacent branch lines. Fishermen on these larger vessels would be required to deploy at least 15 branch lines with hooks between floats. The possession or landing of more than 10 swordfish, which tend to inhabit near-surface waters, would also be prohibited to help ensure that shallow longline fishing does not occur.

This proposed rule would also establish an additional gear configuration requirement that was not recommended in Amendment 5, rather in a September 16, 2010, Biological Opinion resulting from ESA section 7 consultation on the proposed action. NMFS issued the additional requirement as a condition to implement the reasonable and prudent measures of the incidental take statement of that biological opinion. Each branch line (connected to the mainline and terminating in a single baited hook) would have to be at least 10 meters long to help ensure that hooks are set 100 m or deeper from the surface.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities, either through a significant loss in landings or in expenses incurred. The proposed rule would affect vessels operating in the American Samoa longline fishery that are greater than 40 ft in length. Based on 2009 data, this would suggest that the affected vessels would be as follows: Class B (40.1–50 ft): 0 vessels permitted or active; Class C (50.1–70 ft): 5 active, 12 permitted; and Class D (>70 ft): 20 active, 26 permitted. All vessels having the potential to participate in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses, that is, their gross receipts do not exceed $4.0 million.

The proposed gear requirement of at least 70 m of mainline that is free of hooks could be achieved, in part, by removal of the first and last two hooks between each float. The simple removal of these hooks has the potential to reduce albacore catch by 5.1 percent, but fishermen could offset, or mitigate, this potential loss in several ways. They could lengthen the mainline between floats and redistribute the displaced hooks (branch lines), and/or add more mainline with additional hooks. Research has shown that fishermen who are able to adopt these mitigative activities are likely to increase overall landings of albacore relative to status quo due to the prevalence of albacore, especially larger individuals, at depths of 150–250 m. Fishermen could also increase the number of sets on a single trip or on several trips throughout the year to make up for any loss in catch.

Observer data indicate that longline fishermen operating in American Samoa typically use more than 15 branch lines between each float and, generally, do not possess more than a few swordfish on board at any time, so the requirements on the number of branch lines between floats and limits on the number of swordfish on board do not appear to be potential binding constraints. Recent observer data indicate that some fishermen are already meeting the 30 m minimum float line requirement, and that the average length of float line is about 26 m, with a range of 18–36 m. Fishermen who need to increase the length of float lines would spend about $0.40 per additional meter of float line, plus minimal labor costs.

In addition to longline vessels based in American Samoa, the proposed rule would also apply south of the Equator to other U.S. longline fishing in the western Pacific, including vessels operating under Hawaii limited access and Western Pacific general permits. Hawaii deep-set longline fishing vessels have fished south of the Equator in the past; however, since 2005, there have been two or fewer vessels fishing per year, comprising 0.05 percent or less of annual fishing effort by the Hawaii deep-set longline fleet. Consequently, the proposed rule is not likely to have a significant economic impact on a significant number of small entities based in Hawaii. Additionally, there is no reliable information about longline vessels based in U.S. western Pacific ports north of the Equator and operating under Western Pacific general longline permits having ever fished south of the Equator; thus, the proposed rule is not likely to have a significant economic impact on a significant number of those small entities.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. There does not appear to be disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

NMFS concluded a formal section 7 consultation under the Endangered Species Act for Amendment 5. In a biological opinion dated September 16, 2010, NMFS determined that fishing activities conducted under Amendment 5, its implementing regulations, and the terms and conditions of the biological opinion are not likely to jeopardize the continued existence or recovery of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Sea turtles.

Dated: June 1, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.800:

A. Add the definitions of "Branch line" and "Float line" in alphabetical order, and

B. In the definition of "Western Pacific pelagic management unit species" remove the entries for "northern bluefin tuna" and "Indo-Pacific blue marlin," revise the scientific names for "black marlin" and "striped marlin," and add new entries for "Pacific bluefin tuna" and "Pacific blue marlin," to read as follows:

§ 665.800 Definitions.

* * * * *

Branch line (or *dropper line*) means a line with a hook that is attached to the mainline.

* * * * *

Float line means a line attached to a mainline used to buoy, or suspend, the mainline in the water column.

* * * * *

Western Pacific pelagic management unit species means the following species:

English common name	Scientific name
Tunas:	
* * * * *	
Pacific bluefin tuna	*Thunnus orientalis*
* * * * *	
Billfishes:	
* * * * *	
black marlin	*Istiompax indica*
striped marlin	*Kajikia audax*
* * * * *	
Pacific blue marlin	*Makaira nigricans*

English common name	Scientific name
* * * * *	

3. In § 665.802, add a new paragraph (n) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(n) Fail to comply with a term or condition governing longline gear configuration in § 665.813(k) if using a vessel longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to § 665.801 to fish for western Pacific pelagic MUS using longline gear south of the Equator (0° lat.).

* * * * *

4. In § 665.813, add a new paragraph (k) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(k) When fishing south of the Equator (0° lat.) for western Pacific pelagic MUS, owners and operators of vessels longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to § 665.801 must use longline gear that is configured according to the requirements in paragraphs (k)(1) through (k)(5) of this section.

(1) Each float line must be at least 30 m long.

(2) At least 15 branch lines must be attached to the mainline between any two float lines attached to the mainline.

(3) Each branch line must be at least 10 meters long.

(4) No branch line may be attached to the mainline closer than 70 meters to any float line.

(5) No more than 10 swordfish may be possessed or landed during a single fishing trip.

[FR Doc. 2011–13972 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 109
Tuesday, June 7, 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

Food Safety and Inspection Service

[Docket No. FSIS–2011–0001]

International Standard-Setting Activities

AGENCY: Office of Food Safety, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 2010, to May 31, 2011, and June 1, 2011, to May 31, 2012, seeks comments on standards under consideration and recommendations for new standards.

ADDRESSES: Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including diskettes or CD–ROMs and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705–5272.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0001. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee.

FOR FURTHER INFORMATION CONTACT: Karen Stuck, United States Manager for Codex, U.S. Department of Agriculture, Office of Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; phone: (202) 205–7760; fax: (202) 720–3157; e-mail: *USCodex@fsis.usda.gov.*

For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 of this notice.) Documents pertaining to Codex and specific committee agendas are accessible via the World Wide Web at *http://www.codexalimentarius.net/current.asp.* The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.*

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be "responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization." The main organizations are Codex, the World Organisation for Animal Health, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of the SPS standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Office of Food Safety the responsibility to inform the public of the SPS standard-setting activities of Codex. The Office of Food Safety has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office.

Codex was created in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for establishing standards for food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers, ensure fair practices in the food trade, and promote coordination of food standards work undertaken by international governmental and nongovernmental organizations. In the United States, U.S. Codex activities are managed and carried out by the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); and the Environmental Protection Agency (EPA).

As the agency responsible for informing the public of the SPS standard-setting activities of Codex, the Office of Food Safety publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The SPS standards under consideration or planned for consideration; and

2. For each SPS standard specified:

a. A description of the consideration or planned consideration of the standard;

b. Whether the United States is participating or plans to participate in the consideration of the standard;

c. The agenda for United States participation, if any; and

d. The agency responsible for representing the United States with respect to the standard.

To Obtain Copies of the Standards Listed in Attachment 1, Please Contact the Codex Delegate or the U.S. Codex Office

This notice also solicits public comment on standards that are currently under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States delegation activities to interested parties. This information will include the status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same information available through its Web page, *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.* If you would like to access or receive information about specific committees, please visit the Web page or notify the appropriate U.S. delegate or the U.S. Codex Office, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700 (*uscodex@fsis.usda.gov*).

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2010, to May 31, 2011, and June 1, 2011, to May 31, 2012. Attachment 2 provides a list of U.S. Codex Officials (including U.S. delegates and alternate delegates). A list of forthcoming Codex sessions may be found at *http://www.codexalimentarius.net/current.asp.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups; consumer interest groups; allied health professionals; scientific professionals; and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls and export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Done at Washington, DC, on June 1, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

Attachment 1

Sanitary and Phytosanitary Activities of Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Thirty Fourth Session July 4–9, 2011, in Geneva, Switzerland. At that time, it will consider standards, codes of practice, and related matters forwarded to the Commission by the general subject committees, commodity committees, and *ad hoc* Task Forces for adoption as Codex standards and guidance. The Commission will also consider the implementation status of the Codex Strategic Plan, the management of the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius, as well as financial and budgetary issues. At this Session, the Commission will elect a chairperson and three vice chairpersons.

Prior to the Commission meeting, the Executive Committee will meet at its Sixty-fifth Session on June 28–July 1, 2011. It is composed of the chairperson; vice-chairpersons; seven members elected from the Commission from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific; and regional coordinators from the six regional committees. The United States is the elected representative from North America. The Executive Committee will conduct a critical review of the elaboration of Codex standards; consider applications from international non-governmental organizations for observer status in Codex; consider the Codex Strategic Plan and the capacity of the Secretariat; review matters arising from reports of Codex Committees and proposals for new work; and review the Food and Agriculture Organization and the World Health Organisation (FAO/WHO) Trust Fund for Enhanced Participation in Codex.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. The Committee also develops codes of practice, as may be required, and considers methods of sampling and analysis for the determination of veterinary drug residues in food. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or milk producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes, or for modification of physiological functions or behavior.

A Codex Maximum Residue Limit (MRL) for Residues of Veterinary Drugs is the maximum concentration of residue resulting from the use of a

veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRL is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI) or on the basis of a temporary ADI that utilizes an additional safety factor. The MRL also takes into account other relative public health risks as well as food technological aspects.

When establishing an MRL, consideration is also given to residues that occur in food of plant origin or the environment. Furthermore, the MRL may be reduced to be consistent with good veterinary practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

An Acceptable Daily Intake (ADI) is an estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, which can be ingested daily over a lifetime without appreciable health risk.

The 19th Session of the Committee met in Burlington, Vermont, on August 30–September 3, 2010. The reference document is ALINORM REP11/RVDF. The results of the 19th session of the CCRVDF will be considered by the Commission at the 34th Session in July 2011. To be considered for final adoption at Step 8:

- Draft MRLs for Narasin (pig tissues) and Tilmicosin (chicken and turkey tissues).

The Committee will continue work on the following:

- Draft MRLs for Narasin (cattle tissues).
- Proposed draft *Sampling Plans for Residue Control in Aquatic Animal Products and Derived Edible Products of Aquatic Origin.*
- Proposed draft *Guidelines on Performance Characteristics for Multi-Residue Methods.*
- Priority list of veterinary drugs requiring evaluation or re-evaluation by JECFA.
- Proposed amendments to the *Risk Analysis Principles for CCRVDF* for comments and consideration at the next session.
- Proposed revision of *Risk Analysis Principles Applied by the CCRVDF* and the *Risk Assessment Policy for the Setting of MRLs for Veterinary Drugs.*
- Discussion paper on *Extrapolation of MRLs to Additional Species and Tissues.*
- Database on need for MRLs of developing countries.
- Proposed amendments to the *Terms of Reference* of CCRVDF.
- Risk management recommendations for the veterinary drugs for which no ADI or MRL has been recommended by JECFA due to specific human health concerns.
- Discussion paper on *Policy for the Establishment of MRLs or Other Limits in Honey.*

Responsible Agencies: HHS/FDA/CVM; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Contaminants in Foods

The Codex Committee on Contaminants in Foods (CCCF) establishes or endorses permitted maximum levels (ML) and, where necessary, revises existing guidelines levels for contaminants and naturally occurring toxicants in food and feed; prepares priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives; considers and elaborates methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed; considers and elaborates standards or codes of practice for related subjects; and considers other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee held its Fifth Session in The Hague, Netherlands, from March 21–25, 2011. The relevant document is REP11/CF. The following items are to be considered for adoption at Step 5/8 by the 34th Session of the Commission in July 2011:

- Proposed draft *Code of Practice for the Prevention and Reduction of Ethyl Carbamate in Stone Fruit Distillates.*
- Proposed draft Maximum Levels for Melamine in Food (Liquid Infant Formula).

The Committee established or reconvened working groups to:

- Develop proposed draft Maximum Levels for DON and its Acetylated Derivatives in Cereals and Cereal-based Products, including the possibility of revising the existing *Code of Practice for the Prevention and Reduction of Mycotoxin Contamination in Cereals.*
- Develop *Guidance for Risk Management Options on How to Deal with the Results from New Risk Assessment Methodologies* focusing on (1) a description of different risk assessment outcomes in language understandable for risk managers, and (2) the implication of the outcomes and possible risk management options.
- Update the discussion paper on *Ochratoxin in Cocoa* with a view toward discussing at the 6th session of CCFH a possible Code of Practice.
- Update the discussion paper relative to the *Code of Practice for the Prevention and Reduction of Mycotoxin Contamination in Cereals* to determine its relevance to Sorghum, so as to provide background for discussions at the 6th CCCF on the possibility of developing an annex pertaining to Aflatoxins in grain sorghum.
- Compile exiting management practices for Pyrrolizidine Alkaloids for consideration by the 6th session of CCCF of a Code of Practice.
- Develop MLs for Arsenic in rice, specifying whether they apply to total and/or inorganic Arsenic in rice.

The Committee decided to continue work on:

- Proposed draft Maximum Level for Total Aflatoxins in Dried Figs.
- Editorial amendments to the General Standard on Contaminants and Toxins in Food and Feed.

The Committee decided to initiate new work on:

- Reconsidering Maximum Levels for Lead, focusing on foods important to infants and children, and also on canned fruits and vegetables.

The Committee endorsed the following priority list of contaminants and naturally occurring toxicants for JECFA evaluation:

- 3-MCPD esters.
- Glycidyl esters.
- Pyrrolizidine alkaloids.
- Non dioxin-like PCBs.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives

The Codex Committee on Food Additives (CCFA) establishes or endorses acceptable maximum levels (MLs) for individual food additives; prepares a priority list of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes to individual food additives; recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects such as the labeling of food additives when sold as such. The 43rd Session of the Committee met in Xiamen, China, March 14–18, 2011. The relevant document is REP11/FA. Immediately

prior to the Plenary Session, there was a 2-day physical Working Group on the General Standard for Food Additives (GSFA) chaired by the United States. The following items discussed at the Plenary Session will be considered by the 34th Session of the Commission in July 2011. To be considered for adoption at Step 8:

• Draft food additive provisions of the GSFA.

• Revised text of Section 4 (Carry-over of Food Additives into Food) of the Preamble of the GSFA.

To be considered for adoption at Step 5/8:

• Proposed draft food additive provisions of the GSFA.

• Proposed draft revision of the Food Category System of the GSFA (Food Categories 05.1, 05.3 and 05.4) (N07–2010).

• Proposed draft amendments to the *Codex Guideline on Class Names and International Numbering System for Food Additives* (CAC/GL 36–1989).

• Proposed draft specifications for the identity and purity of food additives arising from the 73rd JECFA, including 14 food additives and 167 flavorings.

To be considered for adoption at Step 5:

• Proposed draft revision of the Standard for Food Grade Salt (CODEX STAN 150–1985) (N08–2010).

The Committee also agreed to forward the following to the CAC:

• Food additive provisions of the GSFA recommended for revocation.

• Draft and proposed draft food additive provisions of the GSFA recommended for discontinuation.

• Amendment to the GSFA provision for sulfites in food category 04.1.2.2 (Dried fruits) to reflect the food additive provisions in the Draft Standard for Dessicated Coconut (revision of CODEX STAN 177–1991).

• Amendment to "Explanatory Notes on the Lay-out of the INS" (Section 1 of the *Codex Guideline on Class Names and International Numbering System for Food Additives* (CAC/GL 36–1989)).

The Committee agreed to establish electronic Working Groups and named lead countries on:

• Provisions for aluminum-containing food additives in the GSFA (Brazil).

• Application of Note 161 ("Subject to national legislation of the importing country aimed, in particular, at consistency with Section 3.2 of the Preamble.") to food additive provisions in the GSFA, with formulation of recommendations to facilitate a uniform implementation of Section 3.2 of the Preamble to the GSFA (South Africa).

• A discussion paper on *Food Category 16.0* (Composite foods—foods that could not be placed in categories 01–15) that would: (1) Contain a description of the products in this category, and (2) provide proposals for revision of the name and descriptors of this food category (United States).

• Proposals for changes and additions to the INS, with a focus on changes to technological purposes (Iran).

• Mechanisms for re-evaluation of substances by JECFA, that would establish criteria to prioritize food additives for re-evaluation, with a focus on food colors (Canada).

• Food additive provisions in the GSFA, including: (1) Draft and proposed draft provisions, (2) provisions for which additional information was requested, and (3) provisions in Tables 1 and 2 of the GSFA for those food additives in Table 3 with the function "acidity regulators" and "emulsifiers, stabilizers, thickeners" (United States).

• Alignment of the food additive provisions in the Codex commodity standards for meat products and relevant provisions of the GSFA (Australia).

The Committee agreed to continue working on:

• Prototype of a database on processing aids (China).

• Information document on the GSFA (Codex Secretariat).

• Information document on food additive provisions in commodity standards (Codex Secretariat).

• Information document on *Inventory of Substances Used as Processing Aids* (New Zealand).

The Committee also agreed to hold a physical Working Group on the GSFA immediately preceding the 44th session of CCFA.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues (CCPR) is responsible for establishing maximum limits for pesticide residues in specific food items or in groups of food; establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health; preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR); considering methods of sampling and analysis for the determination of pesticide residues in food and feed; considering other matters in relation to the safety of food and feed containing pesticide residues and; establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides in specific food items or groups of food.

The 43rd Session of the Committee met in Beijing, China, on April 4–9, 2011. The relevant document is REP11/PR. The following items will be considered by the Commission at its 34th Session in July 2011. To be considered for adoption at Step 8:

• Draft MRLs for Pesticides.

To be considered at Step 5/8:

• Proposed draft MRLs for Pesticides.

• Proposed draft revision of the *Guidelines on the Estimation of Uncertainty of Results for the Determination of Pesticide Residues* (Annex to CAC/GL 59–2006).

• Codex Maximum Residue Limits for Pesticides Recommended for Revocation.

• *Analysis of Pesticide Residues: Recommended Methods (Codex Stan 229–1993) Recommended for Revocation.*

• Approval of new work for the *Priority List for the Establishment of MRLs for Pesticides.*

The Committee will continue working on:

• Draft revision of the *Classification of Foods and Animal Feeds: Tree Nuts, Herbs and Spices.*

• Draft *Principle and Guidance for the Selection of Representative Commodities for the Extrapolation of Maximum Residue Limits for Pesticides for Commodity Groups* (including Table 1 on fruit commodities).

• Draft revision of the *Classification of Foods and Animal Feeds: Herbs—Edible Flowers.*

• Proposed draft MRLs for Pesticides at Step 5.

• Proposed draft revision of the *Classification of Foods and Animal Feeds: Assorted Tropical and Sub-tropical Fruits—edible peel and Assorted Tropical and Sub-Tropical Fruits—inedible peel.*

• Proposed draft revision of the *Classification of Foods and Animal Feeds: Other vegetable commodity groups.*

• Establishment of *Codex Priority Lists of Pesticides* (Evaluation of New Pesticides and Pesticides under the Periodic Re-Evaluation).

• *Application of Proportionality in Selecting Data for MRL Estimation.*

• Revision of the *Risk Analysis Principles* applied by the Codex Committee on Pesticide Residues.

• Consideration of the status of Codex MRLs for Lindane.

• Development of criteria for use by CCPR and JMPR to determine minimum number of field trials necessary to support the establishment of MRLs for minor uses/specialty crops.

Responsible Agencies: EPA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling (CCMAS) defines the criteria appropriate to Codex methods of analysis and sampling; serves as a coordinating body for Codex with other international groups working on methods of analysis and sampling and quality assurance systems for laboratories; specifies, on the basis of final recommendations submitted to it by the bodies referred to above, reference methods of analysis and sampling appropriate to Codex standards which are generally applicable to a number of foods; considers, amends if necessary, and endorses as appropriate methods of analysis and sampling proposed by Codex commodity committees, except for methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives; elaborates sampling plans and procedures, as may be required; considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The 32nd Session of the Committee met in Budapest, Hungary, March 7–11, 2011. The relevant document is REP11/MAS. The following items will be considered for adoption by the 34th Session of the Commission in July 2011. To be considered for final adoption at Step 8:

- Draft *Revised Guidelines on Measurement Uncertainty The Committee will continue working on:*
- *Endorsement of Methods of Analysis in Codex Standards.*
- *Principles for the Use of Sampling and Testing in International Food Trade.*
- Developing a discussion paper on *Provisions for Proprietary Methods.*

Responsible Agencies: HHS/FDA; USDA/GIPSA.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is responsible for developing principles and guidelines for food import and export inspection and certification systems, with a view to harmonizing methods and procedures that protect the health of consumers, ensure fair trading practices, and facilitate international trade in foodstuffs; developing principles and guidelines for the application of measures by the competent authorities of exporting and importing countries to provide assurance, where necessary, that foodstuffs comply with requirements, especially statutory health requirements; developing guidelines for the utilization, as and when appropriate, of quality assurance systems to ensure that foodstuffs conform with requirements and promote the recognition of these systems in facilitating trade in food products under bilateral/multilateral arrangements by countries; developing guidelines and criteria with respect to format, declarations, and language of such official certificates as countries may require with a view towards international harmonization; making recommendations for information exchange in relation to food import/export control; consulting as necessary with other international groups working on matters related to food inspection and certification systems; and considering other matters assigned to it by the Commission in relation to food inspection and certification systems.

The Committee has not met since the 33rd session of the Commission in 2010. The Committee is working on:

- Proposed draft *Principles and Guidelines for National Food Control Systems.*
- Discussion paper on further guidance regarding attestation in Generic Model Official Certificate (Annex to CAC/Gl 38–2001)

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Labeling

The Codex Committee on Food Labeling drafts provisions on labeling applicable to all foods; considers, amends, and endorses draft specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice, and guidelines; and studies specific labeling problems assigned by the Codex Alimentarius Commission. The Committee also studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The Committee held its 39th Session in Quebec City, Canada, on May 9–13, 2011. The reference document is REP 11/FL. The following items will be considered by the 34th Session of the Commission in July 2011. To be considered at Step 8:

- Draft revision of the *Guidelines on Nutrition Labeling Concerning the List of Nutrients That are Always Declared on a Voluntary or Mandatory Basis.*

To be considered at step 5:

- Proposed Draft Definition of Nutirent Reference Values Proposal.

To be considered at step 5/8:

- Proposed draft *Recommendations for the Labeling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification/genetic Engineering.*

The Committee is continuing work on:

- Discussion paper on *Additional Conditions for Nutrient Content Claims and Comparative Claims in the Guidelines for Use of Nutrition and Health Claims.*
- Mandatory Nutrition Labeling.
- *Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods.*
- *Annex 1: Inclusion of Ethylene for other Products.*
- Organic Aquaculture.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene (CCFH):

- Develops basic provisions on food hygiene applicable to all food or to specific food types;
- Considers and amends or endorses provisions on food hygiene contained in Codex commodity standards and codes of practice developed by other Codex commodity committees;
- Considers specific food hygiene problems assigned to it by the Commission;
- Suggests and prioritizes areas where there is a need for microbiological risk assessment at the international level and develops questions to be addressed by the risk assessors; and
- Considers microbiological risk management matters in relation to food hygiene and in relation to FAO/WHO risk assessments.

The 42nd Session of the CCFH met in Kampala, Uganda, on November 29–December 3, 2010. The reference document is ALINORM REP 11/FH. Two documents that advanced to Step 5/8 at the 42nd session will be considered for final adoption by the Codex Alimentarius Commission (CAC) at the 34th session in July 2011. Those documents being considered for final adoption at Step 5/8 are:

• Proposed draft *Guideline for the Control of Campylobacter and Salmonella spp in Chicken Meat.*

• Proposed draft *Revision of the Recommended International Code of Hygienic Practice for Collecting, Processing and Marketing of Natural Mineral Waters.*

The Committee continues to work on the following:

• Proposed draft *Guidelines on the Application of General Principles of Food Hygiene to the Control of Viruses in Food* (at Step 3).

• Proposed *Revision of the Principles for the Establishment and Application of Microbiological Criteria for Foods* (at Step 2/3).

The Committee agreed to begin new work on:

• *Guidelines for Control of specific Zoonotic Parasites in Meat: Trichinella spiralis and Cysticercus bovis.*

• Annex on Melons to the Code of Hygienic Practice for Fresh Fruits and Vegetables.

• Discussion paper on the review of the risk analysis principles and procedures applied by the Codex Committee on Food Hygiene.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating worldwide standards and codes of practice as may be appropriate for fresh fruits and vegetables; for consulting with the UNECE Working Party on Agricultural Quality Standards in the elaboration of worldwide standards and codes of practice with particular regard to ensuring that there is no duplication of standards or codes of practice and that they follow the same broad format; and for consulting, as necessary, with other international organizations which are active in the area of standardization of fresh fruits and vegetables.

The Committee held its 16th Session in Mexico City, Mexico, on May 2–6, 2011. The reference document is REP11/FFV. The following will be considered by the Commission at its 34th session in July 2011. To be considered at step 8:

• Draft Standard for Tree Tomatoes.

To be considered at step 5/8:

• Proposed draft Standard for Chili Peppers.

The Committee will continue working on:

• Draft Standard for Avocado at Step 7.

• Proposed draft Standard for Pomegranate at Step 5.

• Proposed draft Standard for Golden Passion Fruit.

• Proposed layout for Codex Standards for Fresh Fruits and Vegetables (including matters relating to point of application and quality tolerances at import/export control points).

• Proposals for new work on Codex Standards for Fresh Fruits and Vegetables.

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) is responsible for studying nutrition issues referred to it by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses in cooperation with other committees where necessary; considers, amends if necessary, and endorses provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

The Committee held its 32nd Session in Santiago, Chile, on November 1–5, 2010. The reference document is REP 11/NSFDU. The following items will be considered by the Commission at its 34th Session in July 2011. To be considered for final adoption at Step 8:

• Draft Annex to the *Guidelines on Nutrition Labeling: General Principles for Establishing Nutrient Reference Values of Vitamins and Minerals for the General Population.*

The Committee will continue work on:

• Proposed draft *Additional or Revised Nutrient Reference Values for Labeling Purposes in the Codex Guidelines on Nutrition Labeling.*

• Proposed draft revision of the Codex General Principles for the Addition of Essential Nutrients to Foods.

• Proposed draft revision of the *Guidelines on Formulated Supplementary Foods for Older Infants and Young Children.*

• Proposed draft *Nutrient Reference Values (NRVs) for Nutrients Associated with Risk of Diet Related Noncommunicable Diseases for the General Population.*

• New work on a New Part B for Underweight Children in the Standard for Processed Cereal-Based Foods for Infants and Young Children.

• Discussion paper for consideration of the revision of the Standard for Follow-up Formula.

Responsible Agencies: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils (CCFO) is responsible for elaborating worldwide standards for fats and oils of animal, vegetable, and marine origin, including margarine and olive oil. The Committee held its 22nd Session in Penang, Malaysia, on February 21–25, 2011. The following items will be considered for adoption by the 34th Session of the Commission in July 2011. To be considered for final adoption at Step 8:

• Draft amendment to the Standard for Named Vegetable Oils: Inclusion of Palm Kernel Olein and Palm Kernel Stearin.

• *Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk: Draft Criteria to Assess the Acceptability of Substances for Inclusion in a List of Acceptable Previous Cargoes.*

• *Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk: Draft List of Acceptable Previous Cargoes.*

To be considered for adoption at Step 5/8:

• *Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk: Proposed Draft List of Acceptable Previous Cargoes.*

The Commission will consider whether to endorse new work on:

• Development of a Standard for Fish Oils.

• Proposed draft amendment to the Standard for Named Vegetable Oils; Rice Bran Oil.

The Commission will consider whether to discontinue work on the following:

• Proposed draft amendment to the Standard for Olive Oils and Olive Pomace Oils: Linolenic Acid Level.

Responsible Agencies: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables (CCPFV) is responsible for elaborating worldwide standards for all types of processed fruits and vegetables including dried products, canned dried peas and beans, and jams and jellies (but not dried prunes or fruit and vegetable juices), as well as revision of standards for quick frozen fruits and vegetables.

The 25th Session of the CCPFV met in Denpasar, Bali, Indonesia, on October 25–29, 2010. The reference document is ALINORM REP 11/PFV. The results of the 25th Session of the CCPFV will be considered by the Commission at its 34th session in July 2011. The following item will be considered for final adoption:

• Proposed amendment to the *Terms of Reference* of the Committee on Processed Fruits and Vegetables to add responsibility for elaboration of standards for fruit and vegetable juices and nectars and related products.

The following items will be considered for final adoption at Step 5/8:

• Proposed draft Codex Standard for Desiccated Coconut.

• Proposed draft Annex on Certain Mushrooms.

• Proposed draft Codex Standard for Canned Bamboo Shoots.

The Committee continues to work on the following:

• Proposed draft Codex Standard for Table Olives.

• Proposed draft *Codex Sampling Plans including Metrological Provisions for Controlling Minimum Drained Weight of Canned Fruits and Vegetables in Packing Media.*

• Proposed draft Codex Standard for Certain Quick Frozen Vegetables.

• Proposed draft Codex Standard for Certain Canned Fruits.

• Food Additive Provisions for Processed Fruits and Vegetables.

• Packing Media Provisions for Pickled Vegetables.

• *Methods of Analysis for Applesauce.*

• Discussion paper on the *Extension of Territorial Application of the Codex Standard for Ginseng Products.*

• Discussion paper on the *Need for a Codex Standard for Chemically Flavored Water-based Drinks.*

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Certain Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die.* The following Committees fall into this category:

• Cereals, Pulses and Legumes.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• Cocoa Products and Chocolate.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• Meat Hygiene.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

• Milk and Milk Products.

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

• Natural Mineral Waters.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• Sugars.

Responsible Agencies: HHS/FDA.

U.S. Participation: Yes.

• Vegetable Proteins.

Responsible Agency: USDA/ARS.

U.S. Participation: Yes.

Ad hoc Intergovernmental Task Force on Antimicrobial Resistance

The ad hoc Intergovernmental Task Force on Antimicrobial Resistance (TFAMR) was created by the 29th Session of the Commission.

The Task Force was hosted by the Republic of Korea and had a timeframe of four sessions, starting with its first meeting in October 2007. Its objective was to develop science-based guidance to be used to assess the risks to human health associated with the presence in food and feed, including aquaculture, and the transmission through food and feed, of antimicrobial resistant microorganisms and antimicrobial resistance genes and to develop appropriate risk management advice based on that assessment to reduce such risk. In this process, work undertaken in this field at national, regional, and international levels was to be taken into account.

The 4th and final Session of the Task Force met in Muju, Republic of Korea, on October 18–22, 2010. The relevant document, *Draft Guidelines for Risk Analysis of Foodborne Antimicrobial Resistance* (REP11/AMR), will be considered for adoption by the Codex Alimentarius Commission (CAC) at the 34th session in July 2011.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The FAO/WHO Regional Coordinating Committees define the problems and needs of the regions concerning food standards and food control; promote within the Committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulate the strengthening of food control infrastructures; recommend to the Commission the development of worldwide standards for products of interest to the region, including products considered by the Committees to have an international market potential in the future; develop regional standards for food products moving exclusively or almost exclusively in intra-regional trade; draw the attention of the Commission to any aspects of the Commission's work of particular significance to the region; promote coordination of all regional food standards work undertaken by international governmental and non-governmental organizations within each region; exercise a general coordinating role for the region and such other functions as may be entrusted to it by the Commission; and promote the use of Codex standards and related texts by members.

Coordinating Committee for Africa

The Committee (CCAfrica) held its 19th session in Accra, Ghana, from February 1–4, 2011. The relevant document is REP11/AFRICA. The Committee agreed to submit a number of recommendations regarding measures that the Commission and FAO/WHO could take in connection with private food safety standards. The Committee also noted that a worldwide standard for processed cheese was necessary, but if that was not possible, a regional standard for Africa should be developed.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for Asia

The Committee (CCAsia) held its 16th session in Bali, Indonesia, from November 22–26, 2010. The relevant document is REP11/ASIA. The following items will be considered for final adoption at Step 8:

• Draft Regional Standard for Edible Sago Flour.

To be considered for adoption at Step 5/8:

• Proposed draft Regional Standard for Chili Sauce.

The Committee continues to work on:

• Proposed draft Standard for Non-Fermented Soybean Products.

• Proposed draft Regional Standard for Tempe.

• Proposed draft Regional Standard for Durian.

• Discussion paper on new work on a Regional Standard for Yuza.

• Discussion paper on new work on a Regional Standard for Edible Crickets and Their Products.

• Update of (i) the implementation of the Strategic Plan for Asia and (ii) issues relevant to the region and draft strategic plan for CCASIA.

• Proposal for new work on a Codex Regional Standard for Laver Products.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for Europe

The Committee (CCEurope) held its 27th session in Warsaw, Poland, from

October 5–8, 2010. The relevant document is REP 11/EURO.

The Committee agreed to nominate Poland for appointment as the Regional Coordinator by the 34th session of the Commission.

The Committee also agreed to propose new work on the revision of the Regional Standard for Fresh Fungus "Chanterelle" and on a regional standard for Ayran.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for Latin America and the Caribbean

The Coordinating Committee for Latin America and the Caribbean (CCLAC) held its 17th session in Acapulco, Mexico, from November 8–12, 2010. The relevant document is REP 11/LAC. The following items will be considered for adoption at the 34th Session of the Commission:

- Proposed draft Codex Regional Standard for Culantro Coyote.
- Proposed draft Codex Regional Standard for Lucuma.

The Committee will continue working on:

- Discussion paper on the formulation of regional positions by CCLAC.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for the Near East

The Committee (CCNEA) will hold its 6th session in Hammamet, Tunisia, from May 23–27, 2011. The Committee will be working on:

- 2.1 Strategic Plan 2008–2013.
- 2.2 Private Standards.
- 2.3 Processed Cheese.
- 2.4 Revised Strategic Plan.
- Proposed draft *Code of Practice for Street Vended Foods.*
- Proposed draft Regional Standard for Harissa (hot pepper paste).
- Proposed draft Regional Standard for halwa Tehenia.
- Project document for Regional Standards for Doogh.
- Project document for a Regional Standard for Camel Milk.
- Project documents for Regional Standards for Date Paste and Date Molasses.
- Classification of foods based on risks.
- FAO/WHO Activities complementary to the work of the Codex Alimentarius Commission, including FAO/WHO project and Trust Fund for Enhanced Participation in Codex.
- Activities of the STDF Programme in the Region.
- National Food Control Systems and Consumer Participation in Food Standard Setting.
- *Use of Codex Standards and Consumer Participation in Food Standard Setting.*
- *Use of Codex Standards at National and Regional Level.*
- Nutritional Issues within the Region.
- Participation in Codex work and in FAO/WHO activities related to scientific advice.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes (as observer).

Coordinating Committee for North America and the Southwest Pacific (CCNASWP)

The Committee (CCNASWP) held its 11th Session in Nuku'alofa, Tonga, from September 28th through October 1st, 2010. The relevant document is REP11/NASWP. The Committee continues to work on:

- Draft Revised Strategic Plan for the CCNASWP 2014–2018.
- Discussion paper on the development of a commodity standard for Kava.
- Discussion paper on the development of a commodity standard for Nonu (Noni).

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Attachment 2

U.S. Codex Alimentarius Officials Codex Chairpersons From the United States

Codex Committee on Food Hygiene

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Codex Committee on Processed Fruits and Vegetables

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Codex Committee on Residues of Veterinary Drugs in Foods

Steven D. Vaughn, DVM, Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, U.S. Food and Drug Administration, MPN 1, Room 236, 7520 Standish Place, Rockville, Maryland 20855. *Phone:* (240) 276–8300. *Fax:* (240) 276–8242. *E-mail: Steven.Vaughn@fda.hhs.gov.*

Listing of U.S. Delegates and Alternates Worldwide General Subject Codex Committees

Codex Committee on Contaminants in Foods

(Host Government—the Netherlands)

U.S. Delegate

Nega Beru, PhD, Director, Office of Food Safety (HFS–300), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740. *Phone:* (240) 402–1700. *Fax:* (301) 436–2651. *E-mail: Nega.Beru@fda.hhs.gov.*

Alternate Delegate

Kerry Dearfield, PhD, Scientific Advisor for Risk Assessment, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 380, Aerospace Center, Washington, DC 20250. *Phone:* (202) 690–6451. *Fax:* (202) 690–6337. *E-mail: Kerry.Dearfield@fsis.usda.gov.*

Codex Committee on Food Additives

(Host Government—China)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Food Hygiene

(Host Government—United States)

U.S. Delegate

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Parkway, HFS–300, Room 3B–014, College Park, MD 20740–3835. *Phone:* (240) 402–2166. *Fax:* (202) 436–2632. *E-mail: Jenny.Scott@fda.hhs.gov.*

Alternate Delegates

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Dr. Joyce Saltsman, Interdisciplinary Scientist, Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740. *Phone:* (240) 402–1641. *Fax:* (301) 436–2651. *E-mail: Joyce.Saltsman@fda.hhs.gov.*

Codex Committee on Food Import and Export Inspection and Certification Systems

(Host Government—Australia)

U.S. Delegate

Mary Stanley, Director, International Policy Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2925, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. *Phone:* (202) 720–0287. *Fax:* (202) 720–4929. *E-mail: Mary.Stanley@fsis.usda.gov.*

Alternate Delegate

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Codex Committee on Food Labeling

(Host Government—Canada)

U.S. Delegate

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Alternate Delegate

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Codex Committee on General Principles

(Host Government—France)

U.S. Delegate

Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee.

Codex Committee on Methods of Analysis and Sampling

(Host Government—Hungary)

U.S. Delegate

Gregory Diachenko, PhD, Director, Division of Product Manufacture and Use, Office of Premarket Approval, Center for Food Safety and Applied Nutrition (CFSAN), U.S. Food and Drug Administration (HFS–300), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835. *Phone:* (240) 402–2387. *Fax:* (301) 436–2364. *E-mail: gregory.diachenko@fda.hhs.gov.*

Alternate Delegate

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Codex Committee on Nutrition and Food for Special Dietary Uses

(Host Government—Germany)

U.S. Delegate

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Codex Committee on Pesticide Residues

(Host Government—China)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Residues of Veterinary Drugs in Foods

(Host Government—United States)

U.S. Delegate

Dr. Kevin Greenlees, Senior Advisor for Science & Policy, Office of New Animal Drug Evaluation, HFV–100, Center for Veterinary Medicine, U.S. Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855. *Phone:* (240) 276–8214. *Fax:* (240) 276–9538. *E-mail: Kevin.Greenlees@fda.hhs.gov.*

Alternate Delegate

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Worldwide Commodity Codex Committees (Active)

Codex Committee on Fats and Oils

(Host Government—Malaysia)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Fish and Fishery Products

(Host Government—Norway)

Delegates

Timothy Hansen, Director, Seafood Inspection Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1315 East West Highway SSMC#3, Silver Spring, MD 20910. *Phone:* (301) 713–2355. *Fax:* (301) 713–1081. *Timothy.Hansen@noaa.gov.*

Dr. William Jones, Director, Division of Seafood Safety, Office of Food Safety (HFS–325), U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740. *Phone:* (240) 402–2300. *Fax:* (301) 436–2601. *William.Jones@fda.hhs.gov.*

Codex Committee on Fresh Fruits and Vegetables

(Host Government—Mexico)

U.S. Delegate

Dorian LaFond, International Standards Coordinator, Fruit and Vegetables Division, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0235—Room 2086, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–0235. *Phone:* (202) 690–4944. *Fax:* (202) 720–0016. *E-mail: dorian.lafond@usda.gov.*

Alternate Delegate

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Codex Committee on Processed Fruits and Vegetables

(Host Government—United States)

U.S. Delegate

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Alternate Delegate

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Worldwide Commodity Codex Committees (Adjourned)

Codex Committee on Cocoa Products and Chocolate (Adjourned sine die)

(Host Government—Switzerland)

U.S. Delegate

Michelle Smith, PhD, Food Technologist, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835. *Phone:* (240) 402–2024. *Fax:* (301) 436–2651. *E-mail: michelle.smith@fda.hhs.gov.*

Cereals, Pulses and Legumes (Adjourned Sine Die)

(Host Government—United States)

Delegate

Henry Kim, PhD, Supervisory Chemist, Division of Plant Product Safety, Office of Plant and Dairy Foods, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740. *Phone:* (240) 402–2023. *Fax:* (301) 436–2651. *henry.kim@fda.hhs.gov.*

Codex Committee on Meat Hygiene (Adjourned Sine Die)

(Host Government—New Zealand)

U.S. Delegate

VACANT

Codex Committee on Milk and Milk Products (Adjourned Sine Die)

(Host Government—New Zealand)

U.S. Delegate

Duane Spomer, Chief, Safety, Security and Emergency Preparedness Branch, Agricultural Marketing Service, U.S. Department of Agriculture, Room 1114, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. *Phone:* (202) 720–1861. *Fax:* (202) 690–2306. *E-mail: duane.spomer@usda.gov.*

Alternate Delegate

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Codex Committee on Natural Mineral Waters

(Host Government—Switzerland)

U.S. Delegate

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Codex Committee on Sugar (Adjourned Sine Die)

(Host Government—United Kingdom)

U.S. Delegate

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Codex Committee on Vegetable Proteins (Adjourned Sine Die)

(Host Government—Canada)

U.S. Delegate

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Ad Hoc Intergovernmental Task Forces

Ad Hoc Intergovernmental Task Force on Animal Feeding

(Host government—Denmark)

Delegate

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Alternate

Dr. Patty Bennett, Branch Chief, Risk Assessment Division, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 901 Aerospace Center, Washington, DC 20250. *Phone:* (202) 690–6189. *patty.bennett@fsis.usda.gov.*

Ad Hoc Intergovernmental Task Force on Antimicrobial Resistance

(Host Government—Republic of Korea)

U.S. Delegate

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Alternate Delegate

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There are six regional coordinating committees:

Coordinating Committee for Africa,
Coordinating Committee for Asia,
Coordinating Committee for Europe,
Coordinating Committee for Latin America and the Caribbean,
Coordinating Committee for the Near East,
Coordinating Committee for North America and the Southwest, Pacific.

Contact:

Karen Stuck, United States Manager for Codex, U.S. Department of Agriculture, Office of Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700. *Phone:* (202) 205–7760. *Fax:* (202) 720–3157. *E-mail: karen.stuck@osec.usda.gov.*

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BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Rural Cooperative Development Grant Application Deadlines

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: USDA Rural Development is seeking applications for the Rural Cooperative Development Grant (RCDG) Program pursuant to section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) (Act). As provided in the Department of Defense and Full-Year Continuing Appropriations Act of 2011 (H.R. 1473), approximately $7.4 million in competitive grant funds is available. The intended effect of this notice is to solicit applications for Fiscal Year (FY) 2011 and award grants on or before September 15, 2011. The maximum award per grant is $225,000 and matching funds are required. In accordance with section 310B(e)(6)(B) of the Act, the Secretary has determined that a grant period of one year is in the best interest of the program at this time.

DATES: Completed applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 22, 2011, to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

Electronic copies must be received by July 22, 2011, to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

ADDRESSES: Application materials for a RCDG may be obtained at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html* or by contacting the applicant's USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html*.

Submit completed paper applications for a grant to Cooperative Programs, *Attn:* RCDG Program, 1400 Independence Avenue SW., Mail Stop 3250, Room 4016–South, Washington, DC 20250–3250. The phone number that should be used for courier delivery is (202) 720–8460.

Submit electronic grant applications at *http://www.grants.gov*, following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html* for application assistance or contact your USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html.* Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Cooperative Development Grant.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.771.

DATES: *Application Deadline:* Completed applications for grants may be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 22, 2011, to be eligible for FY 2011 grant funding. Electronic copies must be received by July 22, 2011, to be eligible for FY 2011 grant funding.

Late applications are not eligible for FY 2011 grant funding.

I. Funding Opportunity Description

RCDGs are authorized by section 310B(e) of the Act. Regulations implementing this authority are in 7 CFR part 4284, subparts A and F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grant funds are provided for the establishment and operation of Centers that have the expertise, or who can contract out for the expertise, to assist individuals or entities in the startup, expansion or operational improvement of rural businesses, especially cooperative or mutually-owned businesses (Section 310B(e)(5)). The program is administered through USDA Rural Development State Offices.

Definitions

The definitions published at 7 CFR 4284.3 and 7 CFR 4284.504 are incorporated by reference. The definition of "rural" and "rural area," at section 343(a)(13) of (7 U.S.C. 1991(a)), are also incorporated by reference. In addition, since there has been some confusion on the Agency's meaning of the terms "conflict of interest," and "mutually-owned business," the Agency is providing clarification.

Conflict of Interest—A situation in which the ability of a person or entity to act impartially would be questionable due to competing professional or personal interests. An example of conflict of interest occurs when the grantee's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Mutually-Owned Business—An organization owned and governed by members who either are its consumers, producers, employees, or suppliers.

II. Award Information

Type of Award: Grant.
Fiscal Year Funds: FY 2011.
Approximate Total Funding: $7.4 million.
Approximate Number of Awards: 35.
Approximate Average Award: $225,000.
Floor of Award Range: None.
Ceiling of Award Range: $225,000.
Anticipated Award Date: September 15, 2011.
Budget Period Length: 12 months.
Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to nonprofit corporations and accredited institutions of higher education. Grants may not be made to public bodies or to individuals.

B. Cost Sharing or Matching

The cost share or matching fund requirement is 25 percent of the *total project cost* (5 percent in the case of 1994 Institutions). Calculation of cost share or matching fund level is as follows:

Grant amount requested = .75 × Total Project Cost.
Total project cost = Grant amount requested/.75.
Total project cost—Grant amount requested = Matching requirement.

For example:

Grant amount requested $225,000 = .75 × Total project cost; $225,000/.75 = Total project cost $300,000.
$300,000 − $225,000 = $75,000 matching requirement.

Applicants must verify in their applications that all matching funds are available during the grant period. If an applicant is awarded a grant, additional verification documentation regarding the availability of matching funds may be required. All of the matching funds must be spent on eligible expenses during the grant period, and must be from eligible sources. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. However, matching funds may include loan proceeds from Federal sources. Matching funds must be spent in advance or as a pro-rata portion of grant funds being expended. All of the matching funds must be provided by either the applicant or a third party in the form of cash or in-kind contributions. The Cooperative Development Center must be able to document and verify the number of hours worked and the value associated with the in-kind contribution. Due to the difficulty in distinguishing the responsibilities normally associated with board/advisory council membership versus those directly associated with specific Center projects, the Agency will no longer accept board/advisory council members' time as an eligible in-kind matching contribution from the applicant. In-kind contributions from board/advisory council members in the form of their travel, incidentals, *etc.* are acceptable only if the Center has established written policies explaining how these costs are normally reimbursed, including rates, and an explanation of this policy is included in the application. In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by the Center cannot be provided for the direct benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest.

C. Other Eligibility Requirements

Grant Period Eligibility: Applications should have a timeframe of no more than 365 consecutive days with the time period beginning no earlier than the date the grant is awarded, and no later than December 31, 2011. However, applicants should note that the anticipated award date is September 15 and proposed start dates should not fall prior to this date. Projects must be completed within the one-year timeframe. The Agency may approve requests to extend the grant period for up to 12 months at the discretion of the Agency. However, should the grantee compete successfully for an RCDG grant during the subsequent grant cycle, the first grant must be closed before funds can be obligated for the subsequent grant.

Completeness Eligibility: Applications without sufficient information to determine eligibility and scoring will be considered ineligible. Applications that are non-responsive to this notice will be considered ineligible.

Activity Eligibility: Applications must propose the development or continuation of a cooperative development center concept or they will not be considered for funding. In addition, the following applications will not be considered for funding.

Applications that:

i. Focus assistance on only one cooperative or mutually-owned business.

ii. Request more than the maximum grant amount.

iii. Propose ineligible costs that equal more than 10 percent of the total project costs (Applications with ineligible costs of 10 percent or less of total project costs that are selected for funding must remove all ineligible costs from the budget and replace them with eligible activities or reduce the amount of the grant award accordingly).

IV. Application and Submission Information

A. Address To Request Application Package

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html.*

For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

B. Submission Dates and Times

Applicants may submit their applications to their State Rural Development Office for a preliminary review by 30 days prior to the final application deadline published in this notice. The preliminary review will assess applicant and project eligibility, as well as completeness of the application in terms of presence of the required elements. Should the Agency identify missing or incomplete elements, the applicant will be notified and given an opportunity to submit the missing elements before the final deadline published in the **Federal Register**. Missing elements will not be accepted after the final application deadline. This preliminary review is an informal assessment of the application and not a final evaluation of the application. Findings of the preliminary review are courtesy only and are not binding on the Agency nor are they appealable. Applications must be submitted on paper or electronically.

Final paper applications must be postmarked and mailed, shipped, or sent overnight no later than July 22, 2011, to be eligible for FY 2011 grant funding. Applications postmarked, mailed, or shipped after July 22, 2011 will not be processed. Final electronic applications must be received by July 22, 2011, to be eligible for FY 2011 grant funding. If the application is submitted electronically, the applicant must follow the instructions given at *http://www.grants.gov*. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure they have obtained the proper authentication and have sufficient computer resources to complete the application.

C. Content and Form of Submission

An application guide may be viewed at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html*.

It is recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov*.

The submission must include all pages of the application. It is recommended that the application be in black and white, not color. Those evaluating the application will only receive black and white images.

The Agency will then screen all applications for eligibility to determine whether the application is sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Information submitted as part of the application will be protected to the extent permitted by law. An application guide and forms are available online at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html*.

Applicants must complete and submit the following elements as part of the application package.

1. Form SF–424, "Application for Federal Assistance," must be completed, signed, and must include a Dunn and Bradstreet Data Universal Numbering System (DUNS) number and maintain registration in the Central Contractor Registration (CCR) database in accordance with 2 CFR part 25. The DUNS number is a nine-digit identification number which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. Similarly, applicants may register for the CCR at *http://www.ccr.gov*. Assistance with CCR registration is available by calling 1–866–606–8220. The CCR CAGE Code and expiration date may be handwritten on the SF–424. For more information, see the RCDG Web site at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html* or contact the USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html*.

2. Form SF–424A, "Budget Information—Non-Construction Programs," must be completed and signed.

3. Form SF–424B, "Assurances—Non-Construction Programs," must be completed and signed.

4. Survey on Ensuring Equal Opportunity for Applicants. The Agency is required to make this survey available to all nonprofit applicants. Submission of this form is voluntary.

5. Title Page. To include the title of the project as well as any other relevant identifying information.

6. Table of Contents. To facilitate review, include page numbers for each component of the application.

7. Executive Summary. A summary of the proposal, not to exceed two pages, must briefly describe the Center, including project goals and tasks to be accomplished, the amount requested, how the work will be performed (*e.g.*, Center staff, consultants, or contractors) and the percentage of work that will be performed among the parties.

8. Eligibility Discussion. The applicant must describe, not to exceed two pages, how it meets the applicant, matching, grant period and activity eligibility requirements.

9. Proposal Narrative. The proposal narrative is limited to a total of 40 pages.

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. If a title page was included under number 5 above, it is not necessary to include an additional title page under this section.

ii. Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria. If the evaluation criteria are listed on the Table of Contents and specifically and individually addressed in narrative form, then it is not necessary to include an information sheet under this section.

iii. Goals of the Project. The applicant must include the following statements in this section of the narrative to demonstrate that the Center is following these statutory requirements:

a. A statement that substantiates that the Center will effectively serve rural areas in the United States;

b. A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

c. A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services. Expected economic impacts should be tied to tasks included in the work plan and budget; and

d. A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal government, and State and local governments.

iv. Performance Measures. The Agency has established annual performance evaluation measures to evaluate the RCDG program. Applicants must provide estimates on the following performance evaluation measures.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance

Note: where not relevant—housing, for example—the applicant should suggest a more relevant performance measure.

- Total number of jobs saved as a result of assistance.

Note: where not appropriate—housing, for example—the applicant should suggest a more appropriate performance measure.

- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

If selected for funding, the applicant will be required to report actual numbers for these performance elements on a semi-annual basis and in the final performance report. Additional information on post-award requirements can be found in Section VI. Applicants must also suggest additional performance elements in the event the proposal receives grant funding. These additional criteria should be specific, measurable performance elements, but are not binding on USDA.

v. Undertakings. The applicant must describe in the application how it will undertake to do each of the following:

(a). Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sectors; (should be presented under proposal evaluation criterion number 9, utilizing the specific requirements of section V.A.9);

(b). Make arrangements for the Center's activities to be monitored and evaluated; (should be addressed under proposal evaluation criterion number 6 utilizing the specific requirements of section V.A.6); and

(c). Provide an accounting for the money received by the grantee in accordance with 7 CFR part 4284, subpart F. This should be addressed under proposal evaluation criterion

number 1, utilizing the specific requirements of section V.A.1.

vi. Work Plan and Budget (should be presented under proposal evaluation criterion number 6, utilizing the specific requirements in section V.A.6).

vii. Delivery of Technical Assistance and Other Services in rural areas to promote and assist the development of cooperatively and mutually-owned businesses (should be described under proposal evaluation criterion number 2, utilizing the specific requirements under section V.A.2).

viii. Qualifications of Personnel (should be presented under proposal evaluation criterion number 7, utilizing the specific requirements under section V.A.7).

ix. Local Support (should be described under proposal evaluation criterion number 8, utilizing the requirements in section V.A.8).

x. Future Support (should be described under proposal evaluation criterion number 9, utilizing the specific requirements under V.A.9).

xi. Proposal Evaluation Criteria. Each of the evaluation criteria referenced in this funding announcement must be specifically and individually addressed in narrative form. Applications that do not address all of the proposal evaluation criteria will be considered ineligible. See Section V.A. for a description of the Proposal Evaluation Criteria.

10. Certification of Judgment Owed to the United States. Applicants must certify that there are no current outstanding Federal judgments against their property. No grant funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. "[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property and will not use grant funds to pay any judgments obtained by the United States." A separate signature is not required.

11. Certification of Matching Funds. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds are pro-rated, such that for every dollar of the total project cost, not less than the required amount of matching funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. To satisfy the Certification requirement, applicants should include this statement for this section: "[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds shall be pro-rated, such that * * * and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will have been expended prior to submitting the request for reimbursement." A separate signature is not required. In the case of fund advances, the applicant will certify that for every dollar of funds advanced, at least 25 cents (5 cents for 1994 Institutions) of matching funds will be expended.

12. Verification of Matching Funds. Applicants must provide documentation of all proposed matching funds, both cash and in-kind. Matching funds must be used for eligible purposes and expenditures for this grant program. The documentation must be included in Appendix A of the application and will not count towards the 40-page limitation. Template letters for each type of matching funds are available at *http://www.rurdev.usda.gov/BCP–RCDG_Grants.html.*

If matching funds are to be provided in cash, the following requirements must be met at the time of application. Additional documentation may be required if a grant is awarded.

Applicant: The application must include a statement verifying (1) The amount of the cash, and (2) the source of the cash. If the applicant is paying for goods and/or services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such.

Third-party: The application must include a signed letter from the third party verifying (1) How much cash will be donated, and (2) that it will be available corresponding to the proposed grant period or donated on a specific date within the grant period. Cash matching contributions from third-parties are to be used for Center operations and cannot be used to provide services which directly benefit the third-party contributor. Contributors of cash matching contributions may not limit or direct how or where the Center may use the contributions.

If matching funds are to be provided by an in-kind donation, the following requirements must be met.

Applicant: The application must include a signed letter from the applicant or its authorized representative verifying (1) The nature of the goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (*i.e.,* corresponding to the proposed grant period or to specific dates within the grant period), and (3) the value of the goods and/or services.

Third-Party: The application must include a signed letter from the third party verifying (1) The nature of the goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (*i.e.,* corresponding to the proposed grant period or to specific dates within the grant period when matching contributions will be made available), and (3) the value of the goods and/or services. It should be noted that non-profit or other organizations contributing the services of affiliated volunteers must follow the third-party verification requirement above, for each individual volunteer.

Applicants should note the following:

- Only goods or services for which no expenditure is made can be considered in-kind.
- In-kind contributions that are over-valued will not be accepted. The valuation process for in-kind funds does not need to be included in the application, but the applicant must be able to demonstrate how the valuation was derived at the time of notification of tentative selection for the grant award, or the grant award may be withdrawn or the amount of the grant may be reduced. Matching funds donated outside the proposed time period of the grant will not be accepted.
- Examples of unacceptable matching funds are in-kind contributions from individuals, businesses, or cooperatives being assisted by the Center to benefit their own project; donations of fixed equipment and buildings; and costs related to the preparation of the RCDG application package.

Expected program income may not be used to fulfill the matching funds requirement at the time of application. However, if there are contracts to provide services in place at the time of application, they may be treated as cash match. If program income is earned during the time period of the grant, it is subject to applicable requirements of 7 CFR part 3015, subpart F and 7 CFR 3019.24, and any applicable provisions in the Grant Agreement.

D. Submission Dates and Times

Application Deadline Date: July 22, 2011.

Explanation of Deadlines: Paper applications must be postmarked by the deadline date (see Section IV.G for the address). Electronic applications must be received by *http://www.grants.gov* by the deadline date. If the application does not meet the deadline above, it will

not be considered for funding. The applicant will be notified if the application does not meet the submission requirements. The applicant will also be notified by mail or by e-mail if the application is received on time.

E. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental review of Federal programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of states that maintain an SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants_spoc.* If an applicant's state has an SPOC, the applicant may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to USDA Rural Development for consideration as part of the application. If the applicant's state has not established an SPOC, or the applicant does not want to submit a copy of the application, USDA Rural Development will submit the application to the SPOC or other appropriate agency or agencies.

Applicants are also encouraged to contact the USDA Rural Development State Office for assistance and questions on this process. Contact information for USDA Rural Development State Offices can be viewed at *http://www.rurdev.usda.gov/recd_map.html.*

F. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the total project cost.

1. Grant funds and matching funds may be used for, but are not limited to, providing the following to individuals, small businesses, cooperative and mutually-owned businesses and other similar entities in rural areas served by the Center (7 U.S.C 1932(e)(4)(c) and 7 U.S.C 1932(e)(5):

i. Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

ii. Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

iii. Training and instruction for the purpose of cooperative development.

iv. Loans and grants for the purpose of cooperative development in accordance with this notice and applicable regulations.

v. Technical assistance, research services and advisory services for the purpose of cooperative development.

vi. Programs providing for the coordination of services and sharing of information among the Centers (7 U.S.C 1932(e)(4)(C)(vi)).

2. No funds made available under this solicitation shall be used for any of the following activities:

i. To duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond that which is currently being provided;

ii. To pay costs of preparing the application package for funding under this program;

iii. To pay costs of the project incurred prior to the date of grant approval;

iv. To fund political or lobbying activities;

v. To pay any judgment or debt owed to the United States;

vi. To plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

vii. To purchase, rent, or install fixed equipment, including laboratory equipment or processing machinery;

viii. To pay for the repair of privately owned vehicles;

ix. To pay for the operating costs of any entity receiving assistance from the Center.

x. To fund research and development;

xi. To pay costs of the project where a conflict of interest exists; or

xii. To fund any activities prohibited by 7 CFR parts 3015 or 3019.

G. Other Submission Requirements

A paper application for a grant must be submitted to Cooperative Programs, *Attn:* RCDG Program, 1400 Independence Avenue, SW., Mail Stop 3250, Room 4016–South, Washington, DC 20250–3250. The phone number that should be used for courier delivery is (202) 720–8460. Electronically submitted applications must apply using *http://www.grants.gov.* Applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents.

V. Application Review Information

A. Proposal Evaluation Criteria

All eligible and complete applications will be evaluated based on the following criteria. Applicants must also include information as directed in Section IV.C.9.v.(a), (b), and (c). Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion. The maximum amount of points available is 100. **Note:** Newly established or proposed Centers that do not yet have a track record on which to evaluate the following criteria should refer to the expertise and track records of staff or consultants expected to perform tasks related to the respective criteria. Proposed or newly established Centers must be organized well-enough at time of application to address its capabilities for meeting these criteria.

1. *Administrative capabilities in support of Center activities.* (maximum score of 10 points) The Agency will evaluate the application to determine whether the applicant demonstrates a proven track record in carrying out activities in support of development assistance to cooperatively and mutually owned businesses. At a minimum, applicants must discuss the following capabilities:

i. Financial systems and audit controls;

ii. Personnel and program administration performance measures;

iii. Clear written rules of governance; and

iv. Experience administering Federal grant funding, including but not limited to past RCDG's.

Applicants that discuss the Center's administrative capabilities and track record, versus those of umbrella or supporting institutions, such as universities or parent organizations, will score higher.

2. *Technical assistance and other services.* (maximum score of 15 points) The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance and accomplishing effective outcomes in rural areas to promote and assist the development of cooperatively and mutually-owned businesses. The applicant must discuss:

i. Their potential for delivering effective technical assistance;

ii. The types of assistance provided;

iii. The expected effects of that assistance;

iv. The sustainability of organizations receiving the assistance; and

v. The transferability of its cooperative development strategies and focus to other areas of the U.S.

Applicants that evidence effective delivery systems for cooperative development will score higher. Applicants that discuss the demonstrated expertise specific to the

Center (as opposed to umbrella or supporting institutions such as universities or parent organizations) will score higher.

3. *Economic development.* (maximum score of 15 points) The Agency will evaluate the applicant's demonstrated ability to facilitate:

i. Establishment of cooperatives or mutually-owned businesses;

ii. New cooperative approaches, and

iii. Retention of businesses, generation of employment opportunities or other factors, as applicable, that will otherwise improve the economic conditions of rural areas.

Applicants that provide statistics for historical and potential development and identify their role in economic development outcomes will score higher.

4. *Networking and regional focus.* (maximum score of 10 points) The Agency will evaluate the applicant's demonstrated commitment to:

i. Networking with other cooperative development centers, and other organizations involved in rural economic development efforts, as well as,

ii. Developing multi-organization and multi-state approaches to addressing the economic development and cooperative needs of rural areas.

New or proposed Centers are expected to be developed enough to address this criteria.

5. *Commitment.* (maximum score of 10 points) The Agency will evaluate the applicant's commitment to providing technical assistance and other services to under-served and economically distressed areas in rural areas of the United States. Applicants that define and describe the underserved and economically distressed areas within their service area, provide statistics, and identify projects within or affecting these areas, as appropriate, will score higher.

6. *Work Plan/Budget.* (maximum score of 10 points) The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non-Federal funding commitments. Applicants must discuss:

i. Specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds;

ii. How customers will be identified;

iii. Key personnel; and

iv. The evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations.

The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

7. *Qualifications of those Performing the Tasks.* (maximum score of 10 points) The Agency will evaluate the application to determine if the personnel expected to perform key tasks have a track record of:

i. Positive solutions for complex cooperative development and/or marketing problems; or

ii. A successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to applicant's success as determined by the tasks identified in the applicants work plan; and

iii. Whether the personnel expected to perform the tasks are full/part-time employees of the applicant or are contract personnel. Applicants that evidence commitment/availability of qualified personnel expected to perform the tasks will score higher.

8. *Local support.* (maximum score of 10 points) The Agency will evaluate applications for previous and/or expected local support for the applicant and plans for coordinating with other developmental organizations in the proposed service area or with state and local government institutions. Applicants that evidence strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations will score higher. Support should be discussed directly within the response to this criterion. The applicant may also submit a maximum of 10 letters of support or intent to coordinate with the application. These letters should be included in Appendix B of the application and will not count against the 40-page limit for the narrative.

9. *Future support.* (maximum score of 10 points) The Agency will evaluate the applicant's vision for funding its operations in future years. Applicants should document:

i. New and existing funding sources that support its goals;

ii. Alternative funding sources that reduce reliance on Federal, State, and local grants; and

iii. The use of in-house personnel for providing services versus contracting out for that expertise.

Applications that evidence vision and likelihood of long-term sustainability with diversification of funding sources and building in-house technical assistance capacity will score higher.

B. Review and Selection Process

The Agency will screen all of the proposals to determine whether the application is eligible and sufficiently responsive to the requirements set forth in this notice to allow for an informed review.

The Agency will evaluate applications using a panel of qualified reviewers who will score the applications in accordance with the point allocation specified in this notice. Applications will be submitted to the Administrator in rank order, together with funding level recommendations.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 15, 2011.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from USDA Rural Development. Applicants must comply with all applicable statutes, regulations, and notice requirements before the grant award will be approved. Unsuccessful applicants will receive notification by mail, including appeal rights, as appropriate. Consolidated comments for reviewed applications will be made available.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and 4284 are applicable to this program. To view these regulations, please see the following internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, "Request for Obligation of Funds."
- Form RD 1942–46, "Letter of Intent to Meet Conditions."
- Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions."
- Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions."
- Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)."

• Form RD 400–4, "Assurance Agreement."

• RD Instruction 1940–Q, Exhibit A–1, "Certification for Contracts, Grants and Loans," including Standard Form (SF) LLL, "Disclosure of Lobbying Activities."

Compliance with the National Environmental Policy Act. Rural Development has determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's NEPA regulation found at 7 CFR 1940.310(e) of Subpart G, Environmental Program. Thus, in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321–4347), Rural Development has determined that this Notice of Funding Availability (NOFA) does not constitute a major federal action significantly affecting the quality of the human environment. Furthermore, individual awards under this NOFA are hereby classified as Categorical Exclusions according to 1940.310(e), the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses, which do not require any additional documentation.

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/BCP–RCDG_Grants.html.*

Reporting Requirements: Grantees must provide USDA Rural Development with an original or electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant.

Compliance with the Federal Funding Accountability and Transparency Act of 2006. All recipients of federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. Similarly, all recipients of federal financial assistance must comply with the DUNS and CCR requirements found at 2 CFR part 25.

1. Form SF–425, a "Federal Financial Report," listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special conditions on the use of award funds should be discussed. The report should also include a summary at the end of the report with the following elements to assist in documenting the annual performance goals of the RCDG program for Congress.

• Number of groups who are not legal entities assisted.

• Number of businesses that are not cooperatives assisted.

• Number of cooperatives assisted.

• Number of businesses incorporated that are not cooperatives.

• Number of cooperatives incorporated.

• Total number of jobs created as a result of assistance

Note: where not relevant—housing, for example—the applicant should suggest a more relevant performance measure.

• Total number of jobs saved as a result of assistance

Note: where not relevant—housing, for example—the applicant should suggest a more relevant performance measure.

• Number of jobs created for the Center as a result of RCDG funding.

• Number of jobs saved for the Center as a result of RCDG funding.

• Additional performance measures identified by the grantee in Section 4(iv) of the application and accepted as binding in the Grant Agreement.

Reports are due as provided in paragraph 1 of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks includes, but is not limited to: Feasibility studies, marketing plans, business plans, publication quality success stories, applied research reports, copies of surveys conducted, articles of incorporation and bylaws and an accounting of how outreach, training, and other funds were expended.

3. Final project performance reports shall include all of the requirements of the semi-annual performance reports and responses to the following:

i. What have been the most challenging or unexpected aspects of this program?

ii. What advice would the grantee give to other organizations planning a similar program? These should include strengths and limitations of the program. If the grantee had the opportunity, what would they have done differently?

iii. If an innovative approach was used successfully, the grantee should describe their program in detail so that other organizations might consider replication in their areas.

The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, applicants should contact their USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html.* If an applicant is unable to contact their State Office, please contact a nearby State Office or the USDA Rural Development National Office at 1400 Independence Avenue, SW., Mail Stop 3250, Room. 4016–South, Washington, DC 20250–3250, telephone: (202) 720–8460, *e-mail: cpgrants@wdc.usda.gov.*

VIII. Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (866) 632–9992 (voice) or (202) 401–0216 (TDD). USDA is an equal opportunity provider and employer.

Dated: May 31, 2011.

Judith A. Canales,

Administrator, Rural Business Cooperative Service.

[FR Doc. 2011–13927 Filed 6–6–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2012 Economic Census of Island Areas

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before August 8, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Geoffrey Hill (301) 763–6554 (e-mail: *Geoffrey.s.hill@census.gov*) or Lillyana Najafzadeh (301) 763–6544 (email: *Lillyana.j.Najafzadeh@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The economic census, conducted under authority of Title 13, United States Code (U.S.C.), is the primary source of facts about the structure and functioning of the United States economy, including Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa. The economic census, is the primary source of facts about each of the island areas' economies, and features the only recognized source of data at a geographic level equivalent to U.S. counties. Economic Census statistics for the island areas serve to benchmark estimates of local net income and gross domestic product, and provide essential information for government (Federal and local), business, and the general public.

The 2012 Economic Census of Island Areas will cover the following sectors (as defined by the North American Industry Classification System (NAICS)): Mining, Utilities, Construction, Manufacturing; Wholesale and Retail Trades, Transportation and Warehousing, Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support, Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services (except Public Administration). This scope is roughly equivalent to that of the stateside economic census. The information collected will produce basic statistics by kind of business on the number of establishments, sales/shipments/receipts/revenue, payroll, and employment. The census will also yield a variety of industry-specific statistics, including sales/receipts by commodity/merchandise/receipt lines, sales/shipments by class of customer, and number of hotel rooms.

To improve calculations of gross domestic product for the island areas, 2012 Economic Census of Island Areas questionnaires include new questions on capital expenditures, depreciation, and selected expenses along with a refinement to the fringe benefits question from the 2007 Economic Census. The collection of data from non-employers in American Samoa has been eliminated from the 2012 Economic Census.

The primary strategy for reducing burden in Census Bureau economic data collection including the Economic Census is to increase electronic reporting through the broader use of electronic collection methods.

II. Method of Collection

The 2012 Economic Census of Island Areas will be conducted using mailout/mailback procedures with an Internet reporting option. Establishments will be selected from the Census Bureau's Business Register. An establishment will be included in the 2012 Island Areas Economic Census if: (a) Is engaged in any of the sectors within the scope of the census listed above; (b) it is an active operating establishment with payroll; and (c) it is located in Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa.

III. Data

OMB Control Number: 0607–0937.

Form Number: The forms used to collect information in Puerto Rico are tailored to specific industries or groups of industries. Puerto Rico forms are available in English as well as Spanish. Only one form, covering all economic activity within the scope of the census, is used for each of the remaining island areas. The forms are too numerous to list individually in this notice. Geoffrey Hill or Lillyana Najafzadeh can provide interested parties with complete information on the forms to be included in this information collection.

Type of Review: Regular submission.

Affected Public: Local Governments, businesses, and other for profit or nonprofit institutions or organizations.

Estimated Number of Respondents: 59,100.

Puerto Rico: 50,000.

Guam: 4,000.

Commonwealth of the Northern Mariana Islands: 1,500.

U.S. Virgin Islands: 3,000.

American Samoa: 600.

Estimated Time per Response:

Puerto Rico: 1 hour.

Guam: 45 minutes.

Commonwealth of Northern Marianas: 45 minutes.

U.S. Virgin Islands: 45 minutes.

American Samoa: 45 minutes.

Estimated Total Annual Burden Hours: 56,825.

Estimated Total Annual Cost: $952,000.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 131 and 224.

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 and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–13969 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Coal Mining Equipment, Technologies and Services Trade Mission to China and Mongolia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing an Executive-led Trade Mission to China and Mongolia for U.S. companies operating in the coal and mining sector and manufacturing or distributing mining and mining-safety equipment. The trade mission, scheduled for October 23–28, 2011, will begin October 23 in Mongolia's capital of Ulaanbaatar, followed October 25–28 by the China portion of the mission, which will visit two cities—Xi'an and Beijing. The mission will include individual participant meetings tailored to each company's goals as well as appropriate government meetings. The mission will conclude at the China Coal and Mining Expo taking place October 28–31, 2011 in Beijing.

Commercial Setting

China

China is the United States' second-largest trading partner and the world's second-largest economy. Last year, U.S. manufactured exports to China were close to $92 billion. Since 2000, U.S. exports to China have more than quintupled. The Chinese government has announced an annual growth target of 7 percent over the next five years, which is regarded as a conservative estimate.

China is the largest coal producer in the world, with about 45% of the world's total annual production. As energy demand increases for its rapid economic development, China's coal production is growing yearly. For the past three years, the country's coal production was 2.7 billion tons, 2.9 billion tons, and 3.2 billion tons respectively. It is expected to reach 4 billion tons in 2011. Coal currently accounts for between 65–70% of China's primary energy supply, and demand for coal is forecast to grow 3.2% annually through 2030.

About 90% of the coal mining equipment used in China is produced domestically. However, Chinese companies are still behind technologically in mining equipment production.

China is also the world's largest emitter of greenhouse gases (GHGs), responsible for over 20% of annual CO2 emissions from burning fossil fuels. Eighty percent of these emissions come from coal. Domestic scarcity of high-quality, cleaner-burning coal poses an additional challenge.

While coal usage efficiency has improved in China, it remains low compared with developed countries. Power generation accounts for 48% of China's coal consumption and a large proportion of flue gas remains untreated prior to emission.

China welcomes foreign participation in the clean-coal sector, including improving the efficiency and clean use of coal. However, significant challenges remain, particularly industry fragmentation, which limits both the quality of the coal that is mined and the ability of coal companies to invest in newer, cleaner technologies. Stronger and more uniform application of standards and incentives is also needed.

Mining

U.S. companies enjoy their greatest competitive advantage in supplying heavy coal mining machines and systems. For underground mining operations, U.S. firms compete well in the following categories: long-wall shearers, stage-loaders, continuous miners, batch haulage vehicles, road headers, hydraulic roof support systems and conveyor systems. For open-pit mining, U.S. firms' best opportunities include electric mining shovels, walking draglines, blast hole drills, and heavy mining trucks.

Coal Mine Safety

Coal mine safety remains a critical issue in China. In 2007, China saw 3,786 deaths in coal mine accidents. In order to address the issue of safety, the Chinese government closed 2,969 small coal mines (below 30,000 tons of production capacity) considered unsafe.

The Chinese government requires all coal mine sites to install a complete safety system, which includes a monitoring system, life shelters, communications system, personnel positioning system, and ventilation and water system. According to the State Administration of Coal Mine Safety Supervision, China is aggressively purchasing safety equipment for large state-owned coal mines. China will spend billions of dollars over the next five years to improve safety in its 10,000-plus coal mines. Many analysts predict that China will need to invest over $151 billion in coal infrastructure by 2020. Part of this investment will cover improvements for coal mine safety.

This creates significant opportunities for foreign companies to export coal-mine safety equipment to China. Best prospects also include gas control systems and fire and gas monitoring and control equipment. The industry will see continued consolidation and a push toward bigger, safer and more modern mines. This is part of the overall policy goal of increasing efficiency, safety and reducing waste.

Clean Coal

Clean coal solutions can be divided into three categories based upon the stage of energy production: pre-combustion, conversion and combustion, and post-combustion. U.S. suppliers enjoy good prospects in all three categories.

Pre-combustion: advanced and energy efficient coal-mining equipment, coal blending, coal screening and scrubbing.

Conversion and combustion: coal liquefaction, gas-turbine technology, Integrated Gasification Combined Cycle (IGCC), Ultra Supercritical Power Generation (USPG), Underground Coal Gasification Combined Cycle (UCGCC).

Post-combustion: Carbon Capture and Sequestration (CCS), Flue Gas Denitration (De-NO_x), Flue Gas Desulphurization (De-SO_x), Particulate Matter (PM) removal.

Mongolia

Mongolia is a vast country with rich natural resources, including coal, copper, molybdenum, tin, tungsten, and gold, making mining the most important sector for Mongolia's economic development. Its world-class mineral deposits have attracted considerable investment in recent years—over $600 million in direct foreign investment in 2010. The landmark Oyu Tolgoi Copper-Gold Mining Project Investment Agreement signed in 2009 between the Mongolian government, Ivanhoe Mines and Rio Tinto has so far brought over $2 billion into Mongolia.

Mining is crucial to Mongolia's development and the mining sector has been a major contributor to the country's GDP. Once major mining projects go into production, Mongolia should see a significant increase in GDP growth, estimated at over 13% for 2011–12. This development undoubtedly will be accompanied by a surge in mining-related imports of plant and machinery. Furthermore, the expansion of the mining sector will have a far-reaching effect on other sectors.

Mongolia has enormous coal reserves estimated at some 100 billion metric tons. In addition, Mongolia's immediate proximity to the world's largest consumer of coal—China—makes the country's coal exploration prospects very attractive, as Mongolia's role in the world coal market grows in importance.

In 2010 coal overtook copper as Mongolia's most important export, accounting for 30% of exports. The country's coal output is projected to grow at an annual average rate of 62.3%, reaching 16.2 million tons per annum by 2015. The Mongolian Government recently invited tenders for two contracts associated with Tavan Tolgoi, one of the world's largest coal deposits. Companies from Russia, Australia, South Korea, Japan, the U.S., India and China are reported to be among the consortia bidders. Licenses for the mine will be held by the state-controlled Erdenes Tavan Tolgoi. The government is preparing for an initial public offering (IPO) for this firm. The IPO is likely to raise several billion U.S. dollars that will help to fund the development of the mine and associated infrastructure.

Mongolia has improved its business environment over the past decade. Most important, the government recently rescinded the 68% tax on windfall profits on Mongolian copper and gold, which was a great impediment to foreign investment into the country.

Mission Goals

The goals of the mission are to help participating companies initiate or expand their exports to China and Mongolia through introductions to industry representatives and potential partners, networking opportunities, current market information and policy discussions with national, provincial and municipal authorities.

This trade mission will permit U.S. companies to showcase effective, state-of-the-art equipment and technologies and to understand underlying issues in their market sector.

Mission Scenario

U.S. firms will need to work with key players, including government regulators, academicians, industry associations, financial institutions, major clean-coal operators (coal, power, and oil and gas companies) to make sure to get a firm foothold in the market. The mission will begin with the stop in Ulaanbaatar, then proceed to Xi'an, capital of Shaanxi Province, one of China's lead coal-producing regions, and conclude in Beijing. At each stop participants will meet with provincial officials and potential private-sector partners. The mission will end in Beijing, where participants will meet with central-government officials of the State Administration of Coal Mine Safety and National Energy Administration, and with private-sector entrepreneurs at the China Coal & Mining Expo trade show.

The participants will attend policy, market and commercial briefings by the U.S. Commercial Service as well as networking events which offer further opportunities to speak with local business and government representatives. Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in China to security;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Ulaanbaatar, Xi'an and Beijing;
- Meetings with government officials in Ulaanbaatar, Xi'an and Beijing;
- Airport transfers in Ulaanbaatar, Xi'an and Beijing;
- Meetings with state government and municipal officials in Mongolia and China; and,
- Networking receptions.

PROPOSED TIMETABLE

Saturday, October 22, 2011	Ulaanbaatar • Participants arrive in Ulaanbaatar via Beijing or Seoul/check-in and rest overnight.
Sunday, October 23, 2011	Ulaanbaatar • Welcome briefing at hotel. • Morning and afternoon free. • Evening reception.
Monday, October 24, 2011	Ulaanbaatar—Beijing • Group meetings with government officials and Mongolian companies. • Evening departure for Beijing. • Overnight in Beijing (airport hotel).
Tuesday, October 25, 2011	Beijing—Xi'an • Morning travel to Xi'an. • Afternoon meetings with government officials and Chinese companies. • Evening reception.
Wednesday, October 26, 2011	Xi'an—Beijing • Meetings with government officials and Chinese companies. • Afternoon travel to Beijing.
Thursday, October 27, 2011	Beijing • Meetings with government officials and Chinese companies. • Optional set up for expo participants. • Evening reception.
Friday, October 28, 2011	Beijing • Opening ceremony of China Coal & Mining Expo. • Trade show tour. • Meetings with government officials and Chinese companies. • Official end of trade mission.

Participation Requirements

All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is designed to select a minimum of 15 U.S. companies to participate in the mission from the applicant pool. U.S. companies already doing business in the target

markets as well as U.S. companies seeking to enter these markets for the first time should apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required.

For the entire mission (China and Mongolia), the fee will be $6,245 for large firms and $5,475 for small and medium-size enterprises (SMEs,[1] *i.e.*, companies with no more than 500 employees).

For China only, the fee will be $4,995 for large firms and $4,500 for SMEs. The fee for each additional participant per company will be $725.

For Mongolia only, the fee will be $1,250 for large firms and $975 for SMEs. The fee for each additional participant per company will be $200.

Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

- Suitability of the company's products or services to the Chinese and/or Mongolian markets and targeted sector.
- Consistency of the applicant's goals and objectives with the stated scope and design of the mission.
- Applicant's potential for business in China and/or Mongolia, including likelihood of exports resulting from the mission.

Diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Selection Timeline

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (*http://www.gpoaccess.gov/fr*), posting on ITA's trade mission calendar—*http://www.trade.gov/trade-missions*—and other Internet Web Sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately, and conclude August 12, 2011, unless extended by the Department of Commerce. Applications received after August 12, 2011, will be considered only if space and scheduling constraints permit.

The U.S. Department of Commerce will inform applicants of selection decisions as soon as possible after August 12, 2011.

Contacts

U.S. Commercial Service—HQ

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U.S. Commercial Service China

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BILLING CODE 3510–FP–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations. *See http://www.sba.gov/contractingopportunities/owners/basics/whatismallbusiness/index.html.* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008. *See http://www.export.gov/newsletter/march2008/initiatives.html.*

DEPARTMENT OF COMMERCE

International Trade Administration

Transportation Infrastructure/Multimodal Products and Services Trade Mission to Doha, Qatar, and Abu Dhabi and Dubai, United Arab Emirates

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. Commercial Service is organizing a senior executive-led trade mission for multimodal transportation and infrastructure development products and services to Doha, Qatar, and Abu Dhabi and Dubai, United Arab Emirates (U.A.E) on October 29–November 3, 2011. The mission is designed to contribute to President Obama's National Export Initiative, which aims to double U.S. exports by 2015 while supporting two million American jobs, by increasing exports of products and services that contribute to infrastructure development projects in Qatar and U.A.E.

The mission will help U.S. companies already doing business in Qatar or the U.A.E. increase their current level of exports and exposure, and will help experienced U.S. exporters, which have not yet done business in Qatar or the U.A.E. enter these markets in support of job creation in the United States. Participating firms will gain market information, connect with key business and government decision makers, solidify business strategies, and/or advance specific projects. In each of these important sectors, participating U.S. companies will meet with prescreened potential partners, agents,

distributors, representatives, and licensees. The agenda will also include meetings with high-level national and local government officials, networking opportunities, country briefings, and seminars.

The industry sectors for this mission will include, but are not limited to: multimodal freight transportation systems, products and technologies, including port development, airport development, freight rail systems and technologies, supply chain systems and strategies; mass transportation systems; advanced vehicle technologies and intelligent transportation systems and related services and software; and other relevant products and services.

The delegation will be composed of 15 qualified U.S. firms representing the industry sectors noted above. Representatives of the U.S. Department of Transportation and the Export-Import Bank of the United States (Ex-Im) will be invited to participate (as appropriate) to provide information and counseling on their programs as they relate to the markets in Qatar and the U.A.E.

Commercial Setting

Qatar

The United States continues to be the largest exporter to Qatar, accounting for 14 percent of the total import market. U.S. exports have surged by 495 percent, from $454 million in 2003 to $2.7 billion in 2009. Qatar is the fifth largest U.S. export destination in the Middle East, making it an important market for U.S. small- and medium-sized businesses.

Qatar is one of the richest countries per capita in the world, with GDP per capita valued at $90,000. In 2010, total GDP was valued at $128 billion. The IMF predicts that Qatar will grow by 20 percent in 2011. The World Bank announced that Qatar is the most economically competitive in the Middle East. Taken together, this has led foreign firms to increase their investment in Qatar's infrastructure, making it one of the most prosperous markets in the Middle East.

Qatar's success in winning the 2022 World Cup Nation Host opens up a constellation of opportunities for U.S. business. The country plans to spend up to $100 billion in infrastructure projects between now and the World Cup in 2022, including roads, bridges, highways, railways, ports, and related consultancy services. Qatar's transportation infrastructure also benefits significantly with respect to Qatar's current domestic growth environment. Its road transportation structure has been operating at capacity, with a strong need to expand the system. Currently, road infrastructure is the only mode of transportation, which is one of the major causes for heavy congestion throughout the country. There are excellent opportunities for U.S. engineers, program management firms, and manufacturers to contribute to the creation of new transport infrastructure projects (*i.e.,* railways, roads, ports, bridges, and highways), along with improved traffic safety systems.

The Prime Minister, Sheikh Hamad bin Jassim, has stated that a significant share of Qatar's budget will be for infrastructure development, and it will be completely self-financed. As much as 30 percent of the budget is reportedly earmarked for infrastructure upgrades, such as the New Doha International Airport, New Doha Seaport, the Doha Expressway Project, roads, and related program management services. The country continues to maintain high levels of capital spending on major projects, which will reach $12 billion in 2010–2011 compared with $10.4 billion in 2009–2010, representing a 15 percent year-on-year increase.

U.A.E.

The U.A.E. is the largest U.S. export market in the Middle East/North Africa region, the second largest economy in the region, and presents qualified American companies with opportunities to expand their products and services to a fast growing market. The U.A.E. is the logistics and business services hub for the wider region. The 2009 GDP for the U.A.E. was $231.3 billion and the 2009 per capita income was $42,000. Despite the recent global financial crisis, the United States and the U.A.E. have continued their long-term trade and investment relationship. Exports between both countries have increased almost every year since 1971, when the U.A.E. was established.

The United States exported over $12 billion worth of products to the U.A.E. in 2009, representing a 237 percent increase since 2002. The United States is the third largest exporter to the U.A.E. and enjoys a very large trade surplus and a strong trading and investment relationship. The U.A.E. is among the Middle East region's leaders in terms of openness to international trade and investment and political stability. It has successfully developed itself into the largest logistics hub in the wider region, with the second-largest man-made port in the world at Jebel Ali, and the fourth busiest airport in the world. It is making major investments in infrastructure and economic diversification, resulting in significant export opportunities for U.S. firms. The U.A.E is developing key transportation infrastructure projects including: Port Khalifa and industrial zone at Taweelah; the new $8 billion Union Railway project; the $6.7 billion expansion of Abu Dhabi International Airport; the construction of the new Maktoum Airport, which will eventually have five runways; and public transportation systems, such as the expansion of the Dubai metro and the construction of the Abu Dhabi metro and light rail. The goods, services and know-how necessary for the construction and profitable operation of these new systems, particularly those related to multimodal freight and intelligent supply chain management, provides significant business opportunities in areas where U.S. companies excel. U.S. products enjoy favorable tariffs that generally do not exceed five percent.[1]

Other Products and Services

The foregoing analysis of export opportunities in Qatar and the U.A.E. is not intended to be exhaustive, but illustrative of the many opportunities in these markets available to U.S. businesses. Other products and services that contribute to the energy and infrastructure development of Qatar and the U.A.E. also may have great potential. Applications from companies selling products and services within the scope of this mission, but not specifically identified in this Mission Statement, will be considered and evaluated by the U.S. Department of Commerce. Companies whose products do not fit the scope of the mission may contact their local U.S. Export Assistance Center (USEAC) to learn about other trade missions and services that may provide more targeted export opportunities. Companies may call 1–800–872–8723, or e-mail: *tic@trade.gov* to obtain such information. This information also may be found on the Department's Web site: *http://www.export.gov.*

Mission Goals

This Business Development Mission will demonstrate the United States' commitment to a sustained economic engagement with Qatar and the U.A.E. The mission will combine policy dialogue and business development for U.S. firms. Additionally, the mission will advance the Administration's goal to broaden and deepen the U.S. exporter base and support the President's National Export Initiative by providing individual participants with business

[1] World Trade Organization: Latest Available MFN Applied Tariffs At HS 6 (2007).

opportunities to achieve export success in these markets.

In support of these goals, the mission's purpose is to support participants as they construct a firm foundation for future business in Qatar and the U.A.E., and specifically aims to:

- Provide participants with market information about the local infrastructure that will contribute to increasing U.S. exports to the Qatari and U.A.E. markets.
- Assist in identifying potential end-users and partners (including potential agents, distributors, and licensee partners) and business strategies for U.S. companies to gain access to the Qatari and U.A.E. markets.
- Provide an opportunity to participate in policy and regulatory framework discussions with Qatari and U.A.E. government officials and private sector representatives to advance U.S. market access interests in these markets.
- Confirm U.S. government support for U.S. business activities in Qatar and the U.A.E. and to provide access to senior government decision makers from Qatar and U.A.E.

Mission Scenario

During the mission to Qatar and the U.A.E., the participants will:

- Meet with high-level Qatari and Emirati government officials.
- Meet with prescreened potential partners, agents, distributors, representatives and licensees.
- Meet with representatives of the Chambers of Commerce, industry and trade associations.
- Attend briefings conducted by Embassy officials on the economic and commercial climates.

Receptions and other business events will be organized to provide mission participants with additional opportunities to speak with local business and government representatives, as well as U.S. business executives living and working in the region.

Proposed Timetable

The mission program will begin at 5 p.m., Saturday, October 29, 2011 and run through the evening of Thursday, November 3, 2011. Participants are encouraged to arrive on or before October 29, 2011.

Saturday, October 29 (weekend)

Doha, Qatar
- No-Host Welcome Dinner

Sunday, October 30

Doha, Qatar
- Market Briefing by U.S. Embassy Officials
- Meetings with Senior Qatari Government Officials
- Business Event/Briefing with Local Industry Representatives
- Networking Reception

Monday, October 31

Doha, Qatar
- One-on-One Business Meetings for the Delegation
- Evening Travel to Abu Dhabi, UAE

Tuesday, November 1

Abu Dhabi, UAE
- Market Briefing by U.S. Embassy Officials
- Meetings with Senior UAE and Abu Dhabi Government Officials
- Business Event/Briefing with Local Industry Representatives
- One-on-One Business Meetings for the Delegation
- Networking reception

Wednesday, November 2

Abu Dhabi, UAE
- One-on-one business matchmaking appointments
- Travel to Dubai

Dubai, UAE
- Networking reception

Thursday, November 3

Dubai, UAE
- Meetings with Senior Dubai Government Officials
- Business Event/Briefing with Local Industry Representatives
- One-on-One Business Meetings for the Delegation
- Closing Dinner

Participation Requirements

All parties interested in participating in the Business Development Mission to Qatar and the U.A.E. must complete and timely submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is designed to select a a maximum of 15 companies to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets, as well as U.S. companies seeking to enter these markets for the first time, are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4259 for large firms and $3707 for a small or medium-sized enterprise (SME),[2] which will cover the principal (one) representative. The fee for each additional firm representative (large firm or SME) is $800. Local transportation, including transport between mission cities, is included in the participation fee.

Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant. Air transportation from the United States (or point of origin) to Qatar and return to the United States is the responsibility of the participant. Business visas may be required. Government fees and processing expenses to obtain such visas are also not included in the mission costs. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

Conditions for Participation

An applicant must timely submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Selection Criteria for Participation: Selection will be based on the following criteria in decreasing order of importance:

- Consistency of a company's products or services with the scope and desired outcome of the mission's goals;
- Suitability of a company's products or services to the Qatari and U.A.E. markets and the likelihood of a participating company's increased exports to or business interests in these markets as a result of this mission;
- Demonstrated export experience in Qatar, the U.A.E., or other foreign markets;

Additional factors, such as diversity of company size, type, location, and

[2] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

demographics, may also be considered during the review process.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Selection Timeline

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar—*http://www.trade.gov/trade-missions/*—and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. government agencies. Applications can be completed on-line at the Qatar and U.A.E. Business Development Mission Web site at *http://www.trade.gov/QatarUAEMission2011* or can be obtained by contacting Jessica Arnold (202–482–1856/*qataruaemission2011@trade.gov*). The application deadline is Monday June 20, 2011, unless extended by the Department of Commerce. Applications received after Monday, June 20, 2011, will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Domestic Contact

Ms. Jessica Arnold, *Phone:* (202) 482–2026/*Fax:* (202) 482–1900, *E-mail: QatarUAEMission2011@trade.gov.*

U.S. Commercial Service Qatar Contact

Mr. Dao Le, U.S. Commercial Service, Doha, Qatar, *Tel:* 011- 974–488–4101/*Fax:* 011–974–488–4163, *E-mail: Dao.Le@trade.gov.*

U.S. Commercial Service U.A.E. Contact

Ms. Laurie Farris, U.S. Commercial Service, Abu Dhabi, UAE, *Phone:* 011–971–2–414–2665/*Fax:* 011–971–2–414–2228, *E-mail: Laurie.Farris@trade.gov.*

Elnora Moye,

U.S. Department of Commerce, Commercial Service Trade Mission Program.

[FR Doc. 2011–13923 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA474

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Ecosystem Scientific and Statistical Committee.

DATES: The meeting will convene at 8:30 a.m. Eastern time on Tuesday, June 28, 2011 and conclude by 2 p.m. on Thursday, June 30, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council Office located at 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Burns, Ecosystem Management Specialist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Ecosystem Scientific and Statistical Committee will meet to discuss the proposed short and long term work plan and conceptual framework for the Ecosystem Scientific and Statistical Committee. The Ecosystem Scientific and Statistical Committee will also discuss ecological, fishery, and social indicators, changes to the SEDAR process, an update on the shallow water grouper model and B.P. Oil Spill and elect an Ecosystem Scientific and Statistical Committee chair and vice chair to serve for the next two years.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630. Materials will also be available to download from the Gulf Council's ftp site. Click on the ftp server under Quick Links, scroll to the Ecosystem folder. In the Ecosystem folder click on the directory named Ecosystem SSC meeting-2011–06.

Although other non-emergency issues not on the agenda may come before the Ecosystem Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Working Group will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: June 2, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13996 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA475

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 26 data/assessment webinar for Caribbean silk snapper, queen snapper, and redtail parrotfish.

SUMMARY: The SEDAR 26 assessments of the South Caribbean silk snapper, queen snapper, and redtail parrotfish will consist of a series of workshops and webinars. This notice is for a webinar associated with the Data and Assessment portions of the SEDAR process. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 26 'post-data, pre-assessment' webinar will be held July 1st, 2011 from 10 a.m. to approximately 1 p.m. Eastern time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; e-mail: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and workshops (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 26 'pre-Data, post-Assessment' webinar series: Using datasets recommended from the Data Workshop, participants from both the data workshop and the assessment workshop will come together for two webinars to provide early modeling advice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: June 2, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–13997 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership solicitation for Hydrographic Services Review Panel.

SUMMARY: This notice responds to the Hydrographic Service Improvements Act Amendments of 2002, Public Law 107–372, which requires the Administrator of the National Oceanic and Atmospheric Administration (NOAA), to solicit nominations for membership on the Hydrographic Services Review Panel (HSRP). The HSRP, a Federal advisory committee, advises the Administrator on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998 (as amended) and such other appropriate matters as the Administrator refers to the Panel for review and advice. The Act states, "the voting members of the Panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields relating to hydrographic data and hydrographic services, marine transportation, port administration, vessel pilotage, coastal and fishery management, and other disciplines as determined appropriate by the Administrator." The NOAA Administrator is seeking to broaden the areas of expertise represented on the Panel and encourages individuals with expertise in navigation data, products and services; coastal management; fisheries management; coastal and marine spatial planning; geodesy; water levels; and other science-related fields to apply for Panel membership. To apply for membership on the Panel, applicants should submit a current resume as indicated in the **ADDRESSES** section. A cover letter highlighting specific areas of expertise relevant to the purpose of the Panel is helpful, but not required. NOAA is an equal opportunity employer.

DATES: Resume application materials should be sent to the address, e-mail, or fax specified and must be received by July 29, 2011.

ADDRESSES: Submit resume for Panel membership to Kathy Watson via mail, fax, or e-mail. Mail: Kathy Watson, NOAA National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, SSMC3 Rm 6126, Silver Spring, MD, 20910; Fax: 301–713–4019; E-mail: *Hydroservices.panel@noaa.gov*; or *kathy.watson@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kathy Watson, NOAA National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, SSMC3 Rm 6126, Silver Spring, Maryland, 20910; Telephone: 301–713–2770 x158, Fax: 301–713–4019; E-mail: *Hydroservices.panel@noaa.gov*; or *kathy.watson@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a, *et seq.*, NOAA's National Ocean Service (NOS) is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The HSRP provides advice on current and emerging oceanographic and marine science technologies relating to operations, research and development; and dissemination of data pertaining to:

(a) Hydrographic surveying;
(b) Shoreline surveying;
(c) Nautical charting;
(d) Water level measurements;
(e) Current measurements;
(f) Geodetic measurements;
(g) Geospatial measurements;
(h) Geomagnetic measurements; and
(i) Other oceanographic/marine related sciences.

The Panel has fifteen voting members appointed by the NOAA Administrator in accordance with 33 U.S.C. 892c. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. The Co-Directors of the Center for Coastal and Ocean Mapping/Joint Hydrographic Center and two other NOAA employees serve as nonvoting members of the Panel. The Director, NOAA Office of Coast Survey, serves as the Designated Federal Official (DFO).

This solicitation is to obtain candidate applications for up to 5 full voting

member vacancies on the Panel as of January 1, 2012. Additional appointments may be made to fill vacancies left by any members who choose to resign during 2012. Be advised that some voting members whose terms expire January 1, 2012 may be reappointed for another full term if eligible.

If you submitted a resume application for the April 21, 2010 **Federal Register** Notice for HSRP membership solicitation, and are still interested in being considered for membership on the Panel, you need to confirm your interest by contacting NOAA's HSRP Program Coordinator, Kathy Watson, at *Hydroservices.panel@noaa.gov*; or *kathy.watson@noaa.gov*; telephone: (301) 713–2770 x158. If you respond that you are still interested, you can either request that your 2010 resume application be resubmitted, or you may resubmit a more current resume application for the 2011 selection process.

Voting members are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, coastal or fishery management, and other oceanographic or marine science areas as deemed appropriate by the Administrator. Full-time officers or employees of the United States may not be appointed as a voting member. Any voting member of the Panel who is an applicant for, or beneficiary of (as determined by the Administrator) any assistance under 33 U.S.C. 892c shall disclose to the Panel that relationship, and may not vote on any other matter pertaining to that assistance.

Voting members of the Panel serve a four-year term, except that vacancy appointments are for the remainder of the unexpired term of the vacancy. Members serve at the discretion of the Administrator and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selects one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair but will not automatically become the Chair if the Chair resigns. Meetings occur at least twice a year, and at the call of the Chair or upon the request of a majority of the voting members or of the Administrator. Voting members receive compensation at a rate established by the Administrator, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when engaged in performing duties for the Panel. Members are reimbursed for actual and reasonable expenses incurred in performing such duties.

Individuals Selected for Panel Membershp

Upon selection and agreement to serve on the HSRP Panel, you become a Special Government Employee (SGE) of the United States Government. 18 U.S.C. 202(a) an SGE(s) is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a fulltime or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Panel must complete the following actions before they can be appointed as a Panel member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting conducted through NOAA Workforce Management); and

(b) Confidential Financial Disclosure Report—As an SGE, you are required to file a Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Report at the following Web site. *http://www.usoge.gov/forms/form_450.aspx.*

Dated: June 1, 2011.

Captain John E. Lowell, Jr.,

NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–14025 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–02]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–02 with attached transmittal, and policy justification.

Dated: June 1, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 24 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-02, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $100 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 11-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$100 million
TOTAL	$100 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Support and maintenance of classified and unclassified F-16 aircraft systems and munitions, spare and repair parts, publications and technical documentation, support equipment, personnel training and training equipment, ground support, communications equipment, U.S. Government and contractor technical and logistics support services, tools and test equipment, and other related elements of program support.

(iv) Military Department: Air Force (QAA, Amendment #2)

(v) Prior Related Cases, if any:
FMS Case SAA-$113M-24AUG00
FMS Case YAB-$156M-31AUG02
FMS Case YAC-$699M-4MAR08

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 24 May 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - F-16 Program Support

The Government of the United Arab Emirates (UAE) has requested a possible sale of support and maintenance of classified and unclassified F-16 aircraft systems and munitions, spare and repair parts, publications and technical documentation, support equipment, personnel training and training equipment, ground support, communications equipment, U.S. Government and contractor technical and logistics support services, tools and test equipment, and other related elements of program support. The estimated cost is $100 million.

This proposed sale will contribute to the foreign policy and national security of the United States by meeting the legitimate security and defense needs of a partner nation that has been, and continues to be, an important force for peace, political stability, and economic progress in the Middle East.

The UAE Air Force and Air Defense (AF&AD) continue to operate the F-16 Block 60 aircraft and previously purchased munitions and support equipment. Providing follow-on support for the UAE's F-16 aircraft and munitions stockpile will ensure operational capability and facilitate UAE AF&AD improvement toward becoming one of the most capable air forces in the region.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is no prime contractor for this sale or any known offset agreements proposed in connection with this sale.

Implementation of this proposed sale may require the assignment of additional U.S. Government or contractor representatives to the UAE. The number and duration will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–13925 Filed 6–6–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Applications, Reports, and Other Records for the 2010–2011 Award Year; Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, etc.

AGENCY: Department of Education.

ACTION: Notice of deadline dates for receipt of applications, reports, and other records for the 2010–2011 award year.

Overview Information

(CFDA Nos. 84.007, 84.033, 84.038, 84.063, 84.069, 84.268, 84.375, 84.376, 84.379, and 84.408)

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant, National Science and Mathematics Access to Retain Talent Grant, Teacher Education Assistance for College and Higher Education Grant, and Iraq and Afghanistan Service Grant programs.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, for the 2010–2011 award year. The Federal student aid programs include the Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant,

Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan (Direct Loan), Academic Competitiveness Grant (ACG), National Science and Mathematics Access to Retain Talent Grant (National SMART Grant), Teacher Education Assistance for College and Higher Education (TEACH) Grant, and Iraq and Afghanistan Service Grant programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

Deadline and Submission Dates: See Tables A, B, and C at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Institutional Student Information Records (ISIRs) or Student Aid Reports (SARs) by Institutions

Table A provides information and deadline dates for application processing, including receipt of the Free Application for Federal Student Aid (FAFSA) and corrections to and signatures for the FAFSA, receipt of ISIRs and SARs, and receipt of verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2011, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), corrections, changes of addresses or schools, or requests for a duplicate SAR is September 21, 2011. Verification documents must be received by the institution no later than the earlier of 120 days after the student's last date of enrollment or September 28, 2011. As a reminder, verification is not required for unsubsidized Direct Stafford Loans and PLUS Loans, TEACH Grants, and Iraq and Afghanistan Service Grants.

For all Federal student aid programs except Parent PLUS, an ISIR or SAR with an official expected family contribution must be received by the institution no later than the earlier of the student's last date of enrollment for the 2010–2011 award year or September 28, 2011. For purposes of only the Federal Pell Grant, ACG, or National SMART Grant programs, a valid ISIR or a valid SAR for a student not meeting the conditions for a late disbursement must be received no later than the earlier of the student's last date of enrollment or September 28, 2011. A valid ISIR or valid SAR for a student meeting the conditions for a late disbursement under the Federal Pell Grant, ACG, or National SMART Grant programs must be received according to the deadline dates provided in Table A.

In accordance with the regulations in 34 CFR 668.164(g)(4)(i), an institution may not make a late disbursement later than 180 days after the date of the institution's determination that the student withdrew, as provided in 34 CFR 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible. Table A provides that an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination of a student's withdrawal or, for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, but not later than September 28, 2011.

Table B—Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions and Table C—Iraq and Afghanistan Service Grant Program Submission Dates for Disbursement Information by Institutions

Tables B and C provide the earliest submission and deadline dates for institutions to submit Federal Pell Grant, ACG, National SMART Grant, and Iraq and Afghanistan Service Grant disbursement records to the Department's Common Origination and Disbursement (COD) System and deadline dates for requests for administrative relief if the institution cannot meet the established deadline for specified reasons.

In general, an institution must submit Federal Pell Grant, ACG, National SMART Grant, or Iraq and Afghanistan Service Grant disbursement records no later than 30 days after making a Federal Pell Grant, ACG, National SMART Grant, or Iraq and Afghanistan Service Grant disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant, ACG, National SMART Grant, or Iraq and Afghanistan Service Grant disbursement. In accordance with the regulations in 34 CFR 668.164, we consider that Federal Pell Grant, ACG, National SMART Grant, and Iraq and Afghanistan Service Grant funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant, ACG, National SMART Grant, and Iraq and Afghanistan Service Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department. An institution's failure to submit disbursement records within the required 30-day timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Table C provides further guidance for this first award year of the new Iraq and Afghanistan Service Grant Program. Previously, we provided the operational guidance that an institution must follow in the Electronic Announcements posted on the Information for Financial Aid Professionals Web site, including the postings of November 6, 2009, May 13, 2010, June 24, 2010, July 30, 2010, October 1, 2010, and November 19, 2010. Information about the Iraq and Afghanistan Service Grant Program is also provided in Volume II, Section 1 of the 2010–2011 *COD Technical Reference.*

Federal Pell Grant, ACG, and the National SMART Grant Programs and the 2011 Crossover Payment Period

The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112–10) rescinded the provision that allowed a student to receive more than one scheduled award in an award year. Under 34 CFR 690.64, an institution would be required to assign a student's 2011 crossover payment period that occurs in the 2010–2011 and 2011–2012 award years to the award year in which the student would receive a greater Federal Pell Grant payment for the payment period. However, since there will be no opportunity for a student to receive a second Scheduled Award during the 2011–2012 award year, Public Law 112–10 included a provision that waives this regulatory requirement for any 2011 crossover payment period. Thus, for a 2011 crossover payment period, an institution may choose the award year to which it assigns a student's crossover payment period for purposes of the Federal Pell Grant Program.

It is important to note that the 2010–2011 award year is the final year for the ACG and National SMART Grant programs. Therefore, an ACG or National SMART Grant award for a 2011 crossover payment period must be assigned to the 2010–2011 award year for an otherwise eligible student to receive payment, and the institution must also assign the student's 2011 crossover payment period for Federal Pell Grant purposes to the 2010–2011 award year.

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the following publications:

- *2010–2011 Funding Education Beyond High School.*
- *2010–2011 Counselors and Mentors Handbook.*
- *2010–2011 ISIR Guide.*
- *2010–2011 Federal Student Aid Handbook.*

Additional information on the institutional reporting requirements for the Federal Pell Grant, ACG, and National SMART Grant programs is contained in the 2010–2011 *COD Technical Reference.*

You may access these publications by selecting the "Publications" link at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov.*

Applicable Regulations: The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668,

(2) Federal Pell Grant Program, 34 CFR part 690, and

(3) Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant Programs, 34 CFR part 691.

FOR FURTHER INFORMATION CONTACT: Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 113E1, Washington, DC 20202–5345. Telephone: (202) 377–4030.

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 under **FOR FURTHER INFORMATION CONTACT**.

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.

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.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1070h, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: June 2, 2011.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

TABLE A—DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS) OR STUDENT AID REPORTS (SARS) BY INSTITUTIONS FOR THE 2010–2011 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Free Application for Federal Student Aid (FAFSA)—"FAFSA on the Web" (original or renewal).	Electronically to the Department's Central Processing System (CPS).	June 30, 2011.[1]
	Signature Page (if required)	To the address printed on the signature page.	September 21, 2011.
Student through an Institution.	An electronic FAFSA (original or renewal).	Electronically to the Department's CPS.	June 30, 2011.[1]
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form.	June 30, 2011.
Student	Electronic corrections to the FAFSA using "Corrections on the Web".	Electronically to the Department's CPS.	September 21, 2011.[1]
	Signature Page (if required)	To the address printed on the signature page.	September 21, 2011.
Student through an Institution.	Electronic corrections to the FAFSA	Electronically to the Department's CPS.	September 21, 2011.[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and e-mail addresses or institutions.	To the address printed on the SAR	September 21, 2011.
Student	Change of mailing and e-mail addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 21, 2011.
Student	SAR with an official expected family contribution (EFC) calculated by the Department's CPS (except for Parent PLUS).	To the institution	The earlier of: —the student's last date of enrollment; or —September 28, 2011.[2]
Student through CPS	ISIR with an official EFC calculated by the Department's CPS (except for Parent PLUS).	To the institution from the Department's CPS.	The earlier of: —the student's last date of enrollment; or —September 28, 2011.[2]
Student	Valid SAR (Pell, ACG, and National SMART Grant Only).	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(g), the earlier of: the student's last date of enrollment; or September 28, 2011.[2]

TABLE A—DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS) OR STUDENT AID REPORTS (SARS) BY INSTITUTIONS FOR THE 2010–2011 AWARD YEAR—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student through CPS	Valid ISIR (Pell, ACG, and National SMART Grant Only).	To the institution from the Department's CPS.	For a student receiving a late disbursement under 34 CFR 668.164(g)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or —September 28, 2011.[2]
Student	Verification documents	To the institution	The earlier of:[3] —120 days after the student's last date of enrollment; or —September 28, 2011.[2]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for a Federal Pell Grant, ACG, and National SMART Grant, the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs, the FFEL Program, and the Federal Direct Loan Program. Students completing verification and submitting a valid SAR or valid ISIR while no longer enrolled will be paid based on the higher of the two EFCs.

TABLE B—FEDERAL PELL GRANT, ACG, AND NATIONAL SMART GRANT PROGRAMS SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2010–2011 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient, ACG recipient, and National SMART Grant recipient at the institution.	To the Common Origination and Disbursement (COD) System using either: —the COD Web site at: www.cod.ed.gov; or. —the Student Aid Internet Gateway (SAIG).	Earliest Disbursement Date: January 13, 2010. Earliest Submission Dates: An institution may submit anticipated disbursement information as early as March 27, 2010. An institution may submit actual disbursement information as early as May 26, 2010, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the Cash Monitoring #1 payment method; or (c) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods.

TABLE B—FEDERAL PELL GRANT, ACG, AND NATIONAL SMART GRANT PROGRAMS SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2010–2011 AWARD YEAR—Continued

Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
			Deadline Submission Dates: Except as provided below, an institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) September 30, 2011.[1] An institution may submit disbursement information after September 30, 2011, only: (a) for a downward adjustment of a previously reported award or disbursement; (b) based upon a program review or initial audit finding per 34 CFR 690.83 or 691.83; (c) for reporting a late disbursement under 34 CFR 668.164(g); or (d) for reporting disbursements previously blocked as a result of another institution failing to post a downward adjustment.
Institutions	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department.	Via COD Web site at: www.cod.ed.gov	The earlier of: —a date designated by the Secretary after consultation with the institution; or —February 1, 2012.
Institutions	Request for administrative relief if a student reenters the institution within 180 days after initially withdrawing and the institution is reporting a disbursement for the student within 30 days of the student's reenrollment but after September 30, 2011[2].	Via COD Web site at: www.cod.ed.gov	The earlier of: —30 days after the student reenrolls; or —May 3, 2012.

[1] The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on September 30, 2011. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

TABLE C—IRAQ AND AFGHANISTAN SERVICE GRANT PROGRAM SUBMISSION DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2010–2011 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Iraq and Afghanistan Service Grant recipient at the institution.	To the Common Origination and Disbursement (COD) System by: —prior to October 9, 2010, calling the COD School Relations Center at (800) 474–7268; or. —on or after October 9, 2010, using the COD Web site at: www.cod.ed.gov.	Earliest Disbursement Date: July 1, 2010. An institution may submit disbursement information no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the Cash Monitoring #1 payment method; or (c) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods. Deadline Submission Dates: Except as provided below, an institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) September 30, 2011.[1] An institution may submit disbursement information after September 30, 2011, only: (a) for a downward adjustment of a previously reported award or disbursement; (b) based upon a program review or initial audit finding per 34 CFR 690.83 or 691.83; (c) for reporting a late disbursement under 34 CFR 668.164(g); or (d) for reporting disbursements previously blocked as a result of another institution failing to post a downward adjustment.
Institutions	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department.	Via COD Web site at: www.cod.ed.gov	The earlier of: —a date designated by the Secretary after consultation with the institution; or —February 1, 2012.
Institutions	Request for administrative relief if a student reenters the institution within 180 days after initially withdrawing and the institution is reporting a disbursement for the student within 30 days of the student's reenrollment but after September 30, 2011.[2]	Via COD Web site at: www.cod.ed.gov	The earlier of: —30 days after the student reenrolls; or —May 3, 2012.

[1]The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on September 30, 2011. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2]Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2011–14016 Filed 6–6–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.326H]

Proposed Extensions and Waivers: National Early Childhood Technical Assistance Center

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension of project period and waiver for the National Early Childhood Technical Assistance Center.

SUMMARY: The Secretary proposes to waive the requirements in the Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.250 and 75.261(a) and (c), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver would enable the currently funded project to receive funding from October 1, 2011 through September 30, 2012.

DATES: We must receive your comments on or before July 7, 2011.

ADDRESSES: Address all comments about this proposed extension of project period and waiver to Julia Martin Eile, U.S. Department of Education, 400 Maryland Avenue, SW., room 4056, Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you prefer to send your comments by e-mail, use the following address: *julia.martin.eile@ed.gov.* You must include the phrase "proposed extension of project period and waiver" in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Julia Martin Eile at the address listed in the **ADDRESSES** section of this notice. Telephone: (202) 245–7431. 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 contact person listed in this section.

Invitation To Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments about this proposed extension of project period and waiver in room 4056, PCP, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On April 28, 2006, the Department published a notice in the **Federal Register** (71 FR 25163) inviting applications for new awards for fiscal year (FY) 2006 for a National Early Childhood Technical Assistance Center (NECTAC). The purpose of the NECTAC, which was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA), is to ensure that eligible infants, toddlers, and children with disabilities (ages birth through five years) receive, as appropriate, services under Parts B and C of the IDEA that ultimately improve their developmental and early learning outcomes. Another purpose of the NECTAC is to ensure that the families of eligible infants, toddlers, and children receiving services under Part C of the IDEA receive services necessary to enhance families' capacity to meet the developmental needs of their infant, toddler, or child.

Based on the 2006 notice inviting applications, the Department made one award for a period of 60 months to the University of North Carolina at Chapel Hill to carry out the activities of the NECTAC.

Currently, the NECTAC focuses on providing technical assistance to strengthen State and local early childhood systems and improve outcomes for infants, toddlers, and children with disabilities and families of infants, toddlers, and children receiving services under Part C of the IDEA.

The NECTAC's current project period is scheduled to end on September 30, 2011. At the current time, we do not believe it would be in the public interest to hold a new competition under this program for a new NECTAC. An extension of the current grantee's project will align the end of the current NECTAC project period with the expiration of the project period for the Technical Assistance Center on Social-Emotional Intervention for Young Children (CFDA No. 84.326B) and allow for the Department to develop a strategic and better coordinated approach to early childhood special education technical assistance without there being a lapse in the provision of technical assistance services currently provided by the NECTAC. For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds, and issue a continuation award in the amount of $3,000,000 to the University of North Carolina at Chapel Hill (H326H060005) for an additional twelve-month period.

Waiving these regulations and issuing this continuation award would ensure that technical assistance is available to strengthen State and local early childhood systems and improve outcomes for infants, toddlers, and children with disabilities and families of infants, toddlers, and children receiving services under Part C of the IDEA.

With this proposed extension of project period and waiver, the NECTAC would conduct the following activities during FY 2012:

(a) Develop products and services to respond to State needs prioritized on the basis of results of current needs-analyses and syntheses.

(b) Provide coordinated individualized and multi-State technical assistance services to address high-priority needs.

(c) Support State-specific technical assistance efforts specified by the Department's Office of Special Education Programs.

(d) Coordinate with other relevant national and State-level technical assistance efforts.

(e) Disseminate documents to a wide audience, including State and local directors of special education.

(f) Maintain the NECTAC's Web site.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed extension of project period and waiver would not have a significant economic impact on a substantial

number of small entities. The entities that would be affected are the current grantee serving as the NECTAC and any other potential applicant.

Paperwork Reduction Act of 1995

This proposed extension of project period and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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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.

Dated: June 2, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–14022 Filed 6–6–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.325F]

Proposed Extensions and Waivers: National Center To Enhance the Professional Development of School Personnel Who Share Responsibility

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension of project period and waiver for the National Center to Enhance the Professional Development of School Personnel Who Share Responsibility for Improving Results for Children with Disabilities.

SUMMARY: The Secretary proposes to waive the requirements in the Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.250 and 75.261(a) and (c), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver would enable the currently funded project to receive funding from October 1, 2011 through September 30, 2012.

DATES: We must receive your comments on or before July 7, 2011.

ADDRESSES: Address all comments about this proposed extension of project period and waiver to Shedeh Hajghassemali, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, Potomac Center Plaza, Washington, DC 20202–2600.

If you prefer to send your comments by e-mail, use the following address: *shedeh.hajghassemali@ed.gov.* You must include the phrase "proposed extension of project period and waiver" in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Shedeh Hajghassemali at the address listed in the **ADDRESSES** section of this notice. Telephone: (202) 245–7506. 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 contact person listed in this section.

Invitation To Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments about this proposed extension of project period and waiver in room 4091, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On June 19, 2006, the Department published a notice in the **Federal Register** (71 FR 35260) inviting applications for new awards for fiscal year (FY) 2006 for a National Professional Development Enhancement Center (Center), funded under the Personnel Development to Improve Services and Results for Children with Disabilities program, authorized under section 662 of the Individuals with Disabilities Education Act (IDEA).

The purpose of the Center is to provide pre-service training and professional development programs with high-quality instructional modules, materials, and resources in order to improve the overall quality of special education personnel training and professional development. The goal is to help ensure that local educational agencies (LEAs) and schools have the capacity to implement school improvement programs to close achievement gaps between students with disabilities and their peers, and to promote access to, and greater participation and progress in, the general education curriculum in the least restrictive environment for students with disabilities.

Based on the 2006 notice inviting applications, the Department made one award for a period of 60 months to Vanderbilt University to serve as the Center. The Center's current project period is scheduled to end on September 30, 2011. We do not believe that it would be in the public interest to hold a new competition in 2011 to fund this personnel development project as the Department is currently working on changes to the entire Personnel Development to Improve Services and Results for Children with Disabilities program. The program's new design will ensure that all the projects being supported are more strategically aligned with each other and that all projects more effectively meet the needs of LEAs and schools for effective teachers and

other school personnel and leaders. The Department is currently shaping these changes and expects to fund a more strategic competition in FY 2012. However, we also have concluded that it would be contrary to the public interest to have a lapse in the provision of the resources currently provided by the Center. For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds, and issue a continuation award in the amount of $1,350,000 to Vanderbilt University (H325F060003) for an additional twelve-month period.

Waiving these regulations and issuing this continuation award would ensure that pre-service and professional development programs will continue to receive instructional modules, materials, and resources to improve the overall quality of training for individuals who provide services to students with disabilities.

With this proposed extension of project period and waiver, the Center would conduct the following activities during FY 2012:

(a) Build on the previous work of the project by developing additional materials, and disseminating products to an increased number of institutions of higher education, State educational agencies, LEAs, and any other entities that provide training and professional development to individuals who provide services to students with disabilities.

(b) Develop products and services that are based on the input obtained from the comprehensive needs-assessments, textbook analyses, focus groups, and consumer-input processes previously conducted by the Center that tapped the experiences and expertise of an array of partners, consumers, and advisors, including staff from the Department's Office of Special Education Programs. In addition, the Center must continue to seek recommendations from consumers and the Department to guide the development of enhancements (*e.g.,* interactive modules, case studies, activities, information briefs) and services (*e.g.,* technical assistance to faculty, training of trainers, training sessions, and dissemination activities) provided by the Center.

(c) Continue to disseminate project materials to instructors and their students through a cost-free, dedicated Web site that meets accessibility standards under section 508 of the Rehabilitation Act (See *http://www.section508.gov* for additional information).

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed extension of project period and waiver would not have a significant economic impact on a substantial number of small entities. The entities that would be affected are the current grantee serving as the Professional Development Enhancement Center and any other potential applicant.

Paperwork Reduction Act of 1995

This proposed extension of project period and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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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.

Dated: June 2, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–14023 Filed 6–6–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.326T]

National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind; Proposed Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension of project period and waiver for the National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind.

SUMMARY: The Secretary proposes to waive the requirements in the Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.250 and 75.261(a) and (c), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver would enable the currently funded National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind to receive funding from October 1, 2011 through September 30, 2013.

DATES: We must receive your comments on or before July 7, 2011.

ADDRESSES: Address all comments about this proposed extension of project period and waiver to Ingrid Oxaal, U.S. Department of Education, 400 Maryland Avenue, SW., room 4154, Potomac Center Plaza, Washington, DC 20202–2600.

If you prefer to send your comments by e-mail, use the following address: *ingrid.oxaal@ed.gov.* You must include the phrase "proposed extension of project period and waiver" in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Ingrid Oxaal at the address listed in the **ADDRESSES** section of this notice. Telephone: (202) 245–7471. 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 contact person listed in this section.

Invitation to Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments

about this proposed extension of project period and waiver in room 4154, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On December 22, 2005, the Department published a notice in the **Federal Register** (70 FR 76039) inviting applications for new awards for fiscal year (FY) 2006 for a National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (Center). The purpose of the Center, which was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA), is to provide specialized technical assistance, training, dissemination, and informational services to States, families, and agencies and organizations that are responsible for the provision of early intervention, special education, and related and transitional services for children through age 21 who are deaf-blind. For purposes of this notice, the term "individuals who are deaf-blind" refers to infants, toddlers, children, youth and young adults through age 21 who are deaf-blind.

Based on the 2005 notice inviting applications, the Department made one award for a period of 60 months to Western Oregon University to establish the Center, which is currently known as the National Consortium on Deaf-Blindness (NCDB). The major goals of the NCDB are three-fold. The first goal is to increase the capacity of State educational agencies (SEAs), local educational agencies (LEAs), early intervention programs, and other agencies to improve policies and practices that will result in appropriate assessment, planning, placement, and services for individuals who are deaf-blind. The second goal is to increase the capacity of State deaf-blind projects as well as State and local agencies to use evidence-based practices to improve outcomes for individuals who are deaf-blind. The third goal is to collaborate with Parent Training and Information Centers (PTIs) to build the capacity of families of individuals who are deaf-blind to build relationships with family, peers, service providers, employers, and others and develop their knowledge about and skills in self-advocacy and self-empowerment.

The NCDB accomplishes this mission through a combination of activities in the following areas: (1) Technical assistance to SEAs, LEAs, families, and organizations that are responsible for the provision of early intervention, special education, and related and transitional services for individuals who are deaf-blind, (2) collection and dissemination of information related to improving outcomes for individuals who are deaf-blind, and (3) training to address gaps in the knowledge of service providers, including gaps in the knowledge of evidence-based practices, to improve outcomes for individuals who are deaf-blind.

The NCDB's current project period is scheduled to end on September 30, 2011. At this time, we do not believe that it would be in the public interest to run a competition under this program for a new Center. This extension will align the end of the NCDB's project period with the end of the grants funded under the Projects for Children and Young Adults who are Deaf-Blind program (CFDA Number 84.326C). This alignment will enable the Department to develop a technical assistance strategy for individuals who are deaf-blind that maximizes the effectiveness and efficiency of the services provided. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of technical assistance services currently provided by the NCDB pending the development of a coordinated strategy for technical assistance for individuals who are deaf-blind. For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c), which limit the extension of a project period if the extension involves the obligation of additional Federal funds, and issue a continuation award in the amount of $4,200,000 to Western Oregon University (H326T060002) for an additional twenty-four-month period.

Waiving these regulations and issuing this continuation award would ensure that technical assistance, training, and dissemination of information to multiple recipients, including families, individuals who are deaf-blind, State projects for deaf-blind services, SEAs, LEAs, lead agencies under Part C of the IDEA, and other State agencies, will not be interrupted during this period of time.

With this proposed extension of project period and waiver, the NCDB will be required to conduct the following activities:

(a) Continue identifying State project needs in order to provide universal, targeted, and intensive technical assistance and training, as appropriate.

(b) Assist State deaf-blind projects (1) to increase collaboration among State deaf-blind projects, the PTIs, and other OSEP Technical and Assistance projects (2) to improve early intervention, instructional and behavioral practices by providing universal, targeted, and intensive technical assistance and training, as appropriate.

(c) Provide information to SEAs to aid in policy development related to services to individuals who are deaf-blind, as appropriate.

(d) Assist families and individuals who are deaf-blind to increase their capacity to build relationships with family, peers, service providers, employers, and others; and develop their knowledge about and skills in self-advocacy and self-empowerment.

(e) Assist personnel preparation training programs to work collaboratively with each other to increase the number of teachers and paraprofessionals who are prepared to provide effective services and implement evidence-based practices to improve outcomes for individuals who are deaf-blind.

(f) Collaborate with the U.S. Department of Education's Office of Special Education and Rehabilitative Services, other Federal technical assistance projects, and State agencies to improve practices and services in early intervention, special education, related services, and transitional services by facilitating inclusion of individuals who are deaf-blind in SEA and LEA initiatives, as appropriate.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed extension of project period and waiver would not have a significant economic impact on a substantial number of small entities. The only entities that would be affected are the current grantee serving as the National Consortium on Deaf-Blindness and any other potential applicant.

Paperwork Reduction Act of 1995

This proposed extension of project period and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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Dated: June 2, 2011.

Alexa Posny,

Assistant Secretary, for Special Education and Rehabilitative Services.

[FR Doc. 2011–14019 Filed 6–6–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Priority for the Disability and Rehabilitation Research Projects and Centers Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

Overview Information

[CFDA: 84.133A–13]

Notice of Proposed Priority; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Project (DRRP)—Center on Knowledge Translation for Disability and Rehabilitation Research (KTDRR Center).

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for a center on knowledge translation for disability and rehabilitation research (KTDRR Center). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2011 and later years. We take this action to focus research attention on areas of national need.

DATES: We must receive your comments on or before July 7, 2011.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *Marlene.Spencer@ed.gov.* You must include "Proposed Priority for KTDRR Center" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@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.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for a DRRP competition in FY 2011 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 5133, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services

authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

Center on Knowledge Translation for Disability and Rehabilitation Research (KTDRR Center)

Background

NIDRR's mission is to generate new knowledge and promote its effective use to improve the abilities of people with disabilities to perform activities of their choice in the community, and to expand society's capacity to provide full opportunities and accommodations for its citizens with disabilities (NIDRR Long Range Plan, 2006). Ensuring that research results can be used to inform decisions made by individuals with disabilities and their family members, disability advocates, service providers, researchers, educators, administrators, policymakers, and others is a critical goal in this mission.

Research is often not used by decisionmakers either because they are not aware of the research findings, or because they lack access to research findings in usable forms. In addition, to reap the full benefits of the research being disseminated, potential users must have information that enables them to judge the quality of the research and the strength of the evidence (particularly where there are competing research claims) as well as the relevance of the findings or products to their particular needs. The information being disseminated must be of high quality and be based on scientifically rigorous research.

In order to increase the impact of NIDRR-funded research, a strategic, comprehensive, and ongoing effort is needed to facilitate the effective use of research findings. NIDRR has adopted the conceptual framework of knowledge translation (KT) to help guide its efforts to promote the effective use of research findings. Knowledge translation in the NIDRR context refers to a multidimensional, active process of ensuring that new knowledge and products gained via research and development reach intended audiences; are understood by these audiences; and are used to improve participation of individuals with disabilities in society. KT encompasses all steps from the creation of new knowledge to the synthesis, dissemination, and implementation of such knowledge (Canadian Institutes of Health Research, 2010), and is built upon continuing interactions and partnerships within and between different groups of knowledge creators and users.

Systematic review, an important step within the KT process, employs an objective and transparent method to identify, evaluate, and synthesize the research on a particular topic. A systematic review involves a comprehensive and systematic search of the research literature on a topic for relevant studies, which are then evaluated using pre-determined, objective criteria for relevance and methodological rigor. In a systematic review, the evidence from relevant studies that meet the pre-determined criteria is then analyzed and synthesized, with the standard of evidence applicable to particular findings clearly identified. In order to ensure that the information is current, systematic reviews should be updated and improved at regular intervals. We encourage potential applicants to examine procedures used by such organizations as the Campbell Collaboration (*http://www.campbellcollaboration.org/*), the Cochrane Collaboration (*http://www.cochrane.org/*), the Department of Education What Works Clearinghouse (*http://www.w-w-c.org/*), and the Evidence for Policy and Practice Information and Coordinating Center (*http://eppi.ioe.ac.uk/cms/*) for more information on systematic reviews.

NIDRR previously funded the National Center for the Dissemination of Disability Research (NCDDR) to support and implement its KT efforts. The NCDDR made progress in many areas, including identification of standards, guidelines, and methods that are appropriate for systematic reviews of disability and rehabilitation research; development of partnerships with existing collaborations and registries to facilitate systematic reviews of disability and rehabilitation research topics; development of informational materials on KT; and provision of technical assistance on KT methods to NIDRR grantees. With this priority, NIDRR proposes to fund a center on knowledge translation for disability and rehabilitation research (KTDRR Center). The KTDRR Center will continue and expand upon the previous work of the NCDDR by leading NIDRR's KT efforts. These KT efforts will allow NIDRR grantees to stay current with new advances in KT practices. These practices include, for example, methods for systematic reviews of social science and public policy research topics for which little experimental evidence exists, and emerging strategies and approaches for meaningful inclusion of intended audiences in the research process. In addition, the KTDRR Center will serve the important role of providing ongoing capacity building and technical assistance to support NIDRR's grantees in their KT efforts.

References

Canadian Institutes of Health Research (2010). More About Knowledge Translation at CIHR. *http://www.cihr-irsc.gc.ca/e/39033.html.*

NIDRR (2006). Notice of Final Long Range Plan. (71 FR 8165), see: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a center on knowledge translation for disability and rehabilitation research (KTDRR Center). The purpose of the KTDRR Center is to promote the use of high-quality disability and rehabilitation research that is relevant to the needs of intended audiences by serving as the main knowledge translation (KT) resource for other NIDRR grantees, including NIDRR grantees that serve as KT centers (NIDRR KT Centers). The KTDRR Center's work will also be available to researchers who are not NIDRR grantees, as well as to the public.

For purposes of this priority, KT refers to a multidimensional, active process of ensuring that new knowledge and products gained via research and development reach intended audiences; are understood by these audiences; and are used to improve participation of individuals with disabilities in society. KT encompasses all steps from the creation of new knowledge to the synthesis, dissemination, and implementation of such knowledge, and is built upon continuing interactions and partnerships within and between different groups of knowledge creators and users.

Under this priority, the KTDRR Center must contribute to the following outcomes:

(a) Increased use of valid and relevant disability and rehabilitation research findings to inform decision-making by individuals with disabilities and their family members, disability advocates, service providers, researchers, educators, administrators, policy-makers, and others. The KTDRR Center must contribute to this outcome by—

(1) Identifying standards, guidelines, and methods that are appropriate for

conducting systematic reviews and developing research syntheses on disability and rehabilitation research. NIDRR grantees must be able to use these standards, guidelines, and methods to systematically assess and describe the rigor of the research, and the quality and relevance of the evidence being considered. The standards used to assess and describe the rigor of the research and the quality of the evidence must be consistent with the definitions of strong and moderate evidence in the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486);

(2) Providing NIDRR grantees with technical assistance on conducting systematic reviews and developing research syntheses in the grantee's area of expertise, using standards, guidelines, and methods that the KTDRR Center identifies pursuant to paragraph (a)(1) of this priority. In so doing, the KTDRR Center must choose appropriate standards, guidelines, or methods, taking into account the types of research and stages of knowledge development in the substantive area(s) being reviewed; and

(3) Providing NIDRR grantees with technical assistance on how to use KT practices that are appropriate for their intended audiences, to promote the use of systematic reviews and research syntheses in the grantee's area of expertise.

(b) Increased knowledge of KT principles and use of current KT practices among NIDRR grantees, including NIDRR KT Centers. The KTDRR Center must contribute to this outcome by—

(1) Providing NIDRR grantees with technical assistance on how to disseminate their research findings using formats and dissemination channels that are appropriate for the intended audiences;

(2) Synthesizing and disseminating information from the KT literature that can be used to improve KT practices used by NIDRR grantees, including other NIDRR KT Centers;

(3) Identifying and showcasing promising KT practices employed by NIDRR KT Centers, other NIDRR grantees, and other entities to increase the use of disability and rehabilitation research findings by individuals with disabilities and their family members, disability advocates, service providers, researchers, educators, administrators, policy-makers, and others;

(4) Facilitating the exchange of KT information among other NIDRR grantees, including other NIDRR KT Centers;

(5) Organizing and sponsoring events (*e.g.,* conferences, workshops, webinars, and other appropriate training events) to build KT capacity among NIDRR grantees; and

(6) Providing technical assistance on KT to other NIDRR KT Centers and other NIDRR grantees, upon request of those centers and grantees.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development. Another benefit of this proposed priority is that the establishment of new DRRPs will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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.

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.

Dated: June 2, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–14024 Filed 6–6–11; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, June 9, 2011

DATES: June 2, 2011.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 9, 2011, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

The meeting will include a presentation by the working group on the impact of technology on the information needs of communities. The Chief of the Public Safety and Homeland Security Bureau and the Assistant Administrator of FEMA will also give a presentation regarding the Emergency Alert System.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Electronic Tariff Filing System (ETFS) (WC Docket No. 10–141). *Summary:* The Commission will consider a Report and Order that enables all carriers that file tariffs with the Commission to do so electronically, thereby streamlining their filing processes while also making tariff information more readily accessible to other carriers and the public.
2	International Bureau	*Title:* The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3–17.8 GHz Frequency Band (IB Docket No. 06–123). *Summary:* The Commission will consider a Second Report and Order adopting technical rules to mitigate space path interference between the 17/24 GHz Broadcasting-Satellite Service (BSS) space stations and current and future Direct Broadcasting Service (DBS) space stations that operate in the same frequency band.

Reforms to certain of the Commission's procedural rules took effect June 1, 2011. See *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0415/FCC–11–11A1.pdf.* Pursuant to these rules, the Sunshine period will now begin at midnight on the day that the Open Meeting agenda (Sunshine notice) is released. Thus, the Sunshine period for the June 9, 2011 Meeting begins at midnight tonight. Note that under the revised rules, ex parte presentations made on the day the Sunshine notice is released relating to a covered proceeding must be filed by the next business day. For further information on revised rules relating to the Sunshine period and ex parte presentations, consult our Web site. See *http://www.fcc.gov/exparte.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an *e-mail to: fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *fcc@bcpiweb.com.*

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–14074 Filed 6–3–11; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 4, 2011. No comments were received.

DATES: Comments must be submitted on or before July 7, 2011.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–0284; or E-mail: *rita.jackson@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title of Collection: Request for Waiver of Service Obligation, Request for

Deferment of Service Obligation and Application for Review.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0510.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Affected Public: U.S. Merchant Marine Academy students and graduates, and subsidized students and graduates.

Form Numbers: MA–935, MA–936 and MA–937.

Abstract: This information collection is essential for determining if a student or graduate of the United States Merchant Marine Academy (USMMA) or subsidized student or graduate of a State maritime academy has a waiveable situation preventing them from fulfilling the requirements of a service obligation contract signed at the time of their enrollment in a Federal maritime training program. It also permits the Maritime Administration (MARAD) to determine if a graduate, who wishes to defer the service obligation to attend graduate school, is eligible to receive a deferment. Their service obligation is required by law.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Annual Estimated Burden Hours: 3.5 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect, if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Dated: May 31, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–14002 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0072]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 8, 2011.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5979; or e-mail *joann.spittle@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD)

Title of Collection: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0529.

Form Numbers: MA–1023, Request for Administrative Waiver of the Jones Act 46 U.S.C. 12121, 46 CFR 388.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Owners of small passenger vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

Need and Use of the Information: MARAD requires the information in order to process applications for waivers of the coastwise trade laws and to determine the effect of waivers of the coastwise trade laws on United States vessel builders and United States-built vessel coastwise trade businesses.

Description of Respondents: Small passenger vessel owners who desire to operate in the coastwise trade.

Annual Responses: 75 responses.

Annual Burden: 75 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

Dated: May 31, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–14005 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their

views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Thomas R. Garrison, individually, and in concert with, and as trustee of the Thomas R. Garrison Trust U/W Sheridan Garrison, the Thomas R. Garrison 2005 Retained Annuity Trust, and the Estate of F. S. Garrison, all of Fayetteville, Arkansas; to gain control of Pinnacle Bancshares, Inc., and thereby indirectly gain control of Pinnacle Bank, both in Rogers, Arkansas.

Board of Governors of the Federal Reserve System, June 2, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–13948 Filed 6–6–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0425]

Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements related to the recall of infant formula.

DATES: Submit either electronic or written comments on the collection of information by August 8, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, 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.

Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, and 107.280 (OMB Control Number 0910–0188)—Extension

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in Section 412(i) of the FD&C Act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the FD&C Act states that the Secretary shall by regulation prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations in part 107 (21 CFR part 107) implement these statutory provisions.

Section 107.230 requires each recalling firm to conduct an infant formula recall with the following elements: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with a copy of the notice. Section 107.240 requires the recalling firm to conduct an infant formula recall with the following elements: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the

effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section [2]	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
107.230	2	1	2	4,500	9,000
107.240	2	1	2	1,482	2,964
107.250	2	1	2	120	240
107.260	1	1	1	650	650
Total					12,854

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice.

The reporting burden estimate is based on Agency records, which show that there are five manufacturers of infant formula and that there have been, on average, two infant formula recalls per year for the past 3 years. Based on this information, we estimate that there will be, on average, approximately two infant formula recalls per year over the next 3 years.

Thus, FDA estimates that two respondents will conduct recalls annually pursuant to §§ 107.230, 107.240, and 107.250. The estimated number of respondents for § 107.260 is minimal because this section is seldom used by FDA; therefore, the Agency estimates that there will be one or fewer respondents annually for § 107.260. The estimated number of hours per response is an average based on the Agency's experience and information from firms that have conducted recalls. We estimate that two respondents will conduct infant formula recalls under § 107.230 and that it will take a respondent 4,500 hours to comply with the requirements of that section, for a total of 9,000 hours. We estimate that two respondents will conduct infant formula recalls under § 107.240 and that it will take a respondent 1,482 hours to comply with the requirements of that section, for a total of 2,964 hours. We estimate that two respondents will submit recommendations for termination of infant formula recalls under § 107.250 and that it will take a respondent 120 hours to comply with the requirements of that section, for a total of 240 hours. Finally, we estimate that one respondent will need to carry out additional effectiveness checks and issue additional notifications under § 107.260, for a total of 650 hours.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice.

Dated: June 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13941 Filed 6–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Economics.

Date: June 24, 2011.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Non-Communicable Diseases.

Date: June 29, 2011.

Time: 12 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Statistical Methods in Aging Research.

Date: July 18, 2011.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Cartilage Aging and Osteoarthritis.

Date: July 28, 2011.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14011 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, HIV Risk-Avoidance Decision Making.

Date: July 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Inst of Nursing Research, National Institutes of Health, 6701 Democracy Blvd (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Heart Failure Palliative Care.

Date: July 8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, National Institute of Nursing Reserach, National Institutes of Health, Bethesda, MD 20892,(301) 594–0343,

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14015 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Epidemiology and Behavioral Sciences.

Date: June 14, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14013 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Study on Genetics of Obesity.

Date: July 20, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13987 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biomedical Research and Research Training Review Subcommittee A, June 28, 2011, 8 a.m. to June 28, 2011, 5 p.m., Hilton Washington, DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910 which was published in the **Federal Register** on May 25, 2011, 76 FR 30370.

The meeting date has been changed to June 16, 2011, 8 a.m. to June 16, 2011, 5 p.m.

The meeting is closed to the public.

Dated: May 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13989 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 28–29, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13992 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSR–W 51.

Date: June 29, 2011.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13991 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13990 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Microbial Communities Grant Applications.

Date: June 27–28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN–12, Bethesda, MD 20892, 301–594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 31, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13988 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: June 28–29, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trial Implementation Grants.

Date: June 29, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13986 Filed 6–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0043]

Telecommunications Service Priority (TSP) System

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; Extension, without change, of a currently approved collection: 1670–0005.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), National Communications System (NCS), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until August 8, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/CS&C/NCS, 245 Murray Lane, Mail Stop 0615, Arlington, VA 20598–0615. E-mailed requests should go to Deborah Bea, *deborah.bea@dhs.gov.* Comments must be identified by DHS–2011–0043 and may also be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: deborah.bea@dhs.gov.*

Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: The purpose of the TSP System is to provide a legal basis for telecommunications vendors to provide priority provisioning and restoration of telecommunications services supporting national security and emergency preparedness functions. The information gathered via the TSP System forms is the minimum necessary for the NCS to effectively manage the TSP System. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, National Communications System.

Title: Telecommunications Service Priority System.

OMB Number: 1670–0005.

Frequency: On occasion. Information is required on particular occasions when an organization decides they want TSP priority on their critical circuits. It is occasional/situational—the program office is not able to determine when this will occur.

Affected Public: Businesses and state, local, territorial or tribal governments.

Number of Respondents: 28,161 respondents.

Estimated Time per Respondent: 3 hours, 17 minutes.

Total Burden Hours: 7,727.42 annual burden hours.

Total Burden Cost (capital/startup): $251,141.15.

Total Burden Cost (operating/maintaining): $0.00.

Dated: May 24, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–13953 Filed 6–6–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0014; OMB No. 1660–0020]

Agency Information Collection Activities: Proposed Collection; Comment Request, Write Your Own (WYO) Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning private sector insurance companies' authorization to offer flood insurance to eligible property owners under the FEMA National Flood Insurance Program and to meet the requirements of the WYO Transaction Record Reporting and Processing Plan.

DATES: Comments must be submitted on or before August 8, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0014. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2011–0014 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Montgomery, Financial Management Analyst, Federal Insurance & Mitigation Administration, (202) 212–2324 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Write Your Own (WYO) Program, FEMA regulation 44 CFR 62.23 authorizes the Federal Insurance Administrator to enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. To facilitate the marketing of flood insurance, the Federal Government will be a grantor of flood insurance coverage for WYO Company policies issued under the WYO arrangement. To ensure that any policyholders' monies are accounted for and appropriately expended, the Federal Insurance Administrator implemented a Financial Control Plan (FCP) under FEMA regulation 44 CFR 62.23(f). This plan requires that each WYO Company submit financial data on a monthly basis into the National Flood Insurance Program's Transaction Record Reporting and Processing Plan (TRRPP) system, as referenced in 44 CFR 62.23(h)(4). The regulation explains the operational and financial control procedures governing the issuance of flood insurance coverage under the National Flood Insurance Program (NFIP) by private sector property insurance companies under the WYO Program.

Collection of Information

Title: Write Your Own (WYO) Program.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0020.

Form Titles and Numbers: FEMA Form 129–1, National Flood Insurance Program's Transaction Record Reporting and Processing Plan (TRRPP).

Abstract: FEMA enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their

customary business practices. WYO Companies are expected to meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan.

Affected Public: Business or other for-profit.

Number of Respondents: 88.

Number of Responses: 1059.

Estimated Total Annual Burden Hours: 623.04.

Estimated Cost: There is no annual start-up or capital costs.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 19, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–13140 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3319–EM; Docket ID FEMA–2011–0001]

Alabama; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA–3319–EM), dated April 27, 2011, and related determinations.

DATES: *Effective Date:* April 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 27, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

On April 27, 2011, I determined that the emergency conditions in certain areas of the State of Alabama resulting from severe storms, tornadoes, and straight-line winds beginning on April 27, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. ("the Stafford Act"). Therefore, I declared that such an emergency exists in the State of Alabama.

In order to provide Federal assistance, you were authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you were authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you were authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you were authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Alabama have been designated as adversely affected by this declared emergency:

All 67 Counties in the State of Alabama for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14008 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1971–DR; Docket ID FEMA–2001–0001]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1971–DR), dated April 28, 2011, and related determinations.

DATES: *Effective Date:* April 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 28, 2011, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, tornadoes, straight-line winds, and flooding beginning on April 15, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 C.F.R. 206.33(d).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Alabama have been designated as adversely affected by this declared major disaster:

Cullman, DeKalb, Franklin, Jefferson, Lawrence, Marshall, Tuscaloosa, and Walker Counties for Individual Assistance.

All 67 Counties in the State of Alabama for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14007 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1974–DR; Docket ID FEMA–2001–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1974–DR), dated May 1, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 1, 2011, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, tornadoes, straight line winds, and associated flooding during the period of April 25–28, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 C.F.R. 206.33(d).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Montague Winfield, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this declared major disaster:

Bradley, Greene, Hamilton, and Washington Counties for Individual Assistance.

Bradley, Greene, Hamilton, and Washington Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant).

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14012 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1972–DR; Docket ID FEMA–2001–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1972–DR), dated April 29, 2011, and related determinations.

DATES: *Effective Date:* April 29, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 29, 2011, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms, tornadoes, straight-line winds, and associated flooding during the period of April 15–28, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this declared major disaster:

Clarke, Greene, Hinds, Jasper, Kemper, Lafayette, and Monroe Counties for Individual Assistance.

Clarke, Greene, Hinds, Jasper, Kemper, Lafayette, and Monroe Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance Program.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14010 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1975–DR; Docket ID FEMA–2011–0001]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1975–DR), dated May 2, 2011, and related determinations.

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 2, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and associated flooding beginning on April 23, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for

a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

The counties of Benton, Clay, Faulkner, Garland, Lincoln, Pulaski, Randolph, and Saline for Individual Assistance.

The counties of Benton, Clay, Faulkner, Garland, Lincoln, Pulaski, Randolph, and Saline for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14014 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1973–DR; Docket ID FEMA–2001–0001]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1973–DR), dated April 29, 2011, and related determinations.

DATES: *Effective Date:* April 29, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 29, 2011, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from severe storms, tornadoes, straight line winds, and associated flooding during the period of April 27–28, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 C.F.R. 206.33(d).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Georgia have been designated as adversely affected by this declared major disaster:

Bartow, Catoosa, Dade, Floyd, Polk, Spalding, and Walker Counties for Individual Assistance.

Bartow, Catoosa, Coweta, Dade, Floyd, Greene, Lamar, Meriwether, Monroe, Morgan, Pickens, Polk, Rabun, Spalding, Troup, and Walker Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14018 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1976–DR; Docket ID FEMA–2011–0001]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 4, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief

and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, and flooding, beginning on April 22, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the selected areas, and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven S. Ward, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Boone, Bracken, Campbell, Carroll, Carter, Fleming, Gallatin, Kenton, Lawrence, Morgan, Nicholas, Oldham, Owen and Washington Counties for Public Assistance.

Ballard, Carlisle, Crittenden, Daviess, Fulton, Henderson, Hickman, Livingston, McCracken, and Union Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 1, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–14017 Filed 6–6–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Vendor Outreach Workshop for Small Businesses in the Texas Intermountain Region of the United States

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization of the Department of the Interior is hosting a Vendor Outreach Workshop for small businesses in the Texas Intermountain region of the United States that are interested in doing business with the Department. This outreach workshop will review market contracting opportunities for the attendees. Business owners will be able to share their individual perspectives with Contracting Officers, Program Managers and Small Business Specialists from the Department.

DATES: The workshop will be held on June 14, 2011, from 8:30 a.m. to 4 p.m.

ADDRESSES: The workshop will be held at the University of Houston, 210 University Center, Houston, Texas 77204. Register online at: *http://www.doi.gov/osdbu.*

FOR FURTHER INFORMATION CONTACT: Mark Oliver, Director, Office of Small and Disadvantaged Business Utilization, 1951 Constitution Ave., NW., MS–320 SIB, Washington, DC 20240, telephone 1–877–375–9927 (Toll-Free).

SUPPLEMENTARY INFORMATION: In accordance with the Small Business Act, as amended by Public Law 95–507, the Department has the responsibility to promote the use of small and small disadvantaged business for its acquisition of goods and services. The Department is proud of its accomplishments in meeting its business goals for small, small disadvantaged, 8(a), woman-owned, HUBZone, and service-disabled veteran-owned businesses. In Fiscal Year 2010, the Department awarded 50 percent of its $2.6 billion in contracts to small businesses.

This fiscal year, the Office of Small and Disadvantaged Business Utilization is reaching out to our internal stakeholders and the Department's small business community by conducting several vendor outreach workshops. The Department's presenters will focus on contracting and subcontracting opportunities and how small businesses can better market services and products. Over 3,000 small businesses have been targeted for this event. If you are a small business interested in working with the Department, we urge you to register online at: *http://www.doi.gov/osdbu* and attend the workshop.

These outreach events are a new and exciting opportunity for the Department's bureaus and offices to improve their support for small business. Additional scheduled events are posted on the Office of Small and Disadvantaged Business Utilization Web site at *http://www.doi.gov/osdbu.*

Mark Oliver,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 2011–13998 Filed 6–6–11; 8:45 am]

BILLING CODE 4210–RK–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCCR–NACA–0511–7479; 3086–SYM]

National Capital Memorial Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National Capital Memorial Advisory Commission (the Commission) will meet at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC on Thursday, June 23, 2011, at 10:30 a.m., to consider matters pertaining to commemorative works in the District of Columbia and its environs.

DATES: Thursday, June 23, 2011.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov,* by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC and its environs.

The members of the Commission are as follows:

Director, National Park Service,
Administrator, General Services Administration,
Chairman, National Capital Planning Commission,
Chairman, Commission of Fine Arts,
Mayor of the District of Columbia,
Architect of the Capitol,
Chairman, American Battle Monuments Commission,
Secretary of Defense.

The agenda for the meeting is as follows:

(1) Memorial to American Veterans Disabled for Life—Design presentation.

(2) Memorial to Presidents John Adams and his Legacy—Review of an Alternative Sites Study presented by the Adams Memorial Foundation.

(3) Review of legislation proposed in the 112th Congress.

(a) H.R. 854, a bill to authorize the Peace Corps Commemorative Foundation to establish a memorial to commemorate the formation of the Peace Corps and the ideals of world peace and friendship upon which the Peace Corps was founded.

(b) S. 253 and H.R. 938, bills to establish a World War I National Memorial Commission and reestablish the District of Columbia World War Memorial as the National World War I Memorial.

(c) S. 883, a bill to authorize the Liberty Fund to establish a memorial to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution.

(d) H.R. 1559, to authorize the Benjamin Harrison Society to establish a memorial to the Patriots of the American Revolution and the War of 1812.

(e) H.R. 1619, "The MADE Act of 2011," to amend the Commemorative Works Act to require that commemorative works in the District of Columbia be constructed of materials that are grown, produced or manufactured in the United States.

(4) Other Business.

The meeting will begin at 10:30 a.m. and is open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission. 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.

Dated: May 18, 2011.

Woody Smeck,

Acting Regional Director, National Capital Region.

[FR Doc. 2011–13999 Filed 6–6–11; 8:45 am]

BILLING CODE 4312–JK–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Liquid Crystal Display Devices and Products Containing Same,* DN 2811; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Samsung Electronics Co., Ltd., Inc. on June 1, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices and products containing same. The complaint names as respondents AU Optronics Corp. of Taiwan; AU Optronics Corporation America of Houston, TX; Acer America Corporation of San Jose, CA; Acer Inc. of Taiwan; BenQ America Corp. of Irvine, CA; BenQ Corp. of Taiwan; Sanyo Electronic Co., Ltd. of Japan; and Sanyo North America Corporation, San Diego, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2811") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf).* Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: June 2, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13942 Filed 6–6–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Grain Handling Facilities

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Grain Handling Facilities (29 CFR 1910.272)," to the Office of Management and Budget (OMB) for review and approval for 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 July 7, 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 information collection requirements are directed toward assuring the safety of workers in grain handling through development of a housekeeping plan, an emergency action plan, procedures for the use of tags and locks, the issuance of hot work permits, and permits for entry into grain storage structures. Certification records are required after inspections of the mechanical and safety control equipment associated with dryers, grain stream processing equipment, etc.

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 1218–0206. 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 February 22, 2011 (76 FR 9815).

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 1218–0206. 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 (OSHA).

Title of Collection: Grain Handling Facilities (29 CFR 1910.272).

OMB Control Number: 1218–0206.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 18,804.

Total Estimated Number of Responses: 1,312,126.

Total Estimated Annual Burden Hours: 68,762.

Total Estimated Annual Other Costs Burden: $0.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–13979 Filed 6–6–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Baker's Pride, Inc., Burlington, Iowa.

Principal Product/Purpose: The loan, guarantee, or grant application is to obtain financing for infrastructure updates, working capital, and equipment purchases to get a newly acquired bakery facility into production, which will be located in Burlington, Iowa. The NAICS industry code for this enterprise is: 311812 (commercial bakeries).

DATES: All interested parties may submit comments in writing no later than June 21, 2011.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

SIGNED: at Washington, DC, this 31st of May, 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–13937 Filed 6–6–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Buc-ee's, Ltd., New Braunfels, Comal County, Texas.

Principal Product/Purpose: The loan, guarantee, or grant application is to provide funds for the purchase of real estate and construction of a new location of Buc-ee's (gas station and convenience store), which will be located in New Braunfels, Comal County, Texas. The NAICS industry code for this enterprise is: 447110 (gasoline stations with convenience stores).

DATES: All interested parties may submit comments in writing no later than June 21, 2011.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC this 31st day of May, 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–13936 Filed 6–6–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2009 Performance; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration (ETA) published in the **Federal Register** on May 9, 2011, an announcement from the Department of Labor, in collaboration with the Department of Education, regarding which states are eligible to apply for WIA (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive awards under WIA section 503. The May 9, 2011, announcement did not include the appendix referencing which states passed the WIA portion and Adult Education and Family Literacy Act of the incentives review, respectively; the notice has been updated to include this appendix. Please note that no information has changed on the notice, nor has the number of states eligible for incentive funding.

DATES: This Notice is effective on June 7, 2011.

FOR INFORMATION CONTACT: Karen A. Staha or Luke Murren, U.S. Department of Labor, Employment and Training Administration, Division of Strategic Planning and Performance, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. *Telephone number:* 202–693–3733 (this is not a toll-free number). *Fax:* 202–693–3490. *E-mail: staha.karen@dol.gov* or *murren.luke@dol.gov.* Information may also be found at the ETA Performance *Web site: http://www.doleta.gov/performance.*

Correction

In the **Federal Register** published on May 9, 2011, on page 26769, the PY 2008–FY 2009 Incentive Grants Exceeded State Performance Levels chart (see Appendix) should be added to read as:

APPENDIX

State	Incentive Grants PY 2008–FY 2009 Exceeded State Performance Levels		
	WIA (Title IB)	AEFLA (adult education)	WIA Title IB; AEFLA
Alabama		X	
Alaska			
Arizona	X	X	X
Arkansas	X		
California		X	
Colorado		X	
Connecticut			
District of Columbia			
Delaware		X	
Florida	X		
Georgia			
Hawaii			
Idaho			
Illinois		X	
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana		X	
Maine			
Maryland			
Massachusetts		X	
Michigan			
Minnesota	X	X	X
Mississippi			
Missouri		X	
Montana			
Nebraska			
Nevada	X		
New Hampshire		X	
New Jersey			
New Mexico			
New York		X	
North Carolina			
North Dakota	X	X	X
Ohio			
Oklahoma			
Oregon			
Pennsylvania		X	
Puerto Rico			
Rhode Island		X	
South Carolina			
South Dakota			
Tennessee		X	
Texas	X	X	X
Utah		X	

APPENDIX—Continued

State	Incentive Grants PY 2008–FY 2009 Exceeded State Performance Levels		
	WIA (Title IB)	AEFLA (adult education)	WIA Title IB; AEFLA
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			

States in **bold** exceeded their performance levels for both AEFLA and WIA Title IB programs.

Signed in Washington, DC, on this 31st day of May 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–13938 Filed 6–6–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Wage and Hour Division

Request (ICR) for the Family Medical Leave Act (FMLA) Employee and Employer Surveys; Comment Request

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice and Extension of comment period.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Wage and Hour Division is soliciting comments concerning its proposal to collect information on employees' and employers' experience with family and medical leave under the Family and Medical Leave Act (FMLA). A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 17, 2011. The period for public comment which was to close on May 31, 2011, will be extended to June 17, 2011.

ADDRESSES: You may submit comments identified by "FMLA Survey" by either one of the following methods: *E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and "FMLA Survey" for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice must be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: Given changes in economic conditions and the Family and Medical Leave Act (FMLA) regulations since the 2000 employee and employer surveys, the Wage and Hour Division of the U.S. Department of Labor needs to collect new information on the use and need of FMLA leave in order to update DOL's understanding of leave-taking behavior and to close current data gaps remaining from the previous surveys. To better understand both employees' and employers' experience with FMLA, two new surveys will be conducted to collect information about the need for and the experience with family and medical leave from employees' and employers' perspectives. This study will help the Department by providing information on current workplace practices related to family and medical leave. An in-depth analysis of private sector FMLA policies allows WHD to determine how those policies affect the work-life balance of workers and the productivity and work flow of employers. The study enables DOL to shape future regulatory options, craft interpretive guidance (such as plain language fact sheets), develop compliance programs (employer outreach and investigation policies), and establish regulatory priorities based on sound, current data rather than on outdated data or anecdotal information. Finally, the study provides a data set by which DOL can evaluate the effect on employer compliance of a range of FMLA activities—regulatory, educational, investigative, and legal—on employer compliance.

Two previous FMLA surveys have been conducted. The first FMLA study, in which workers and employers were surveyed to learn about family and medical leave policies and their effect on workers and their employers, was conducted in 1995 by the bipartisan Commission on Family and Medical Leave. The final report on this survey, titled "A Workable Balance: Report to Congress on Family and Medical Leave Policies," is available online at *http://www.dol.gov/whd/fmla/1995Report/family.htm.* The second study was conducted in 2000 by Westat at the request of the Department. The Westat study updated the 1995 data by

administering employee and employer surveys similar to the 1995 surveys. The second study entitled "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys, 2000 Update" is available on the Department's Web site at *http://www.dol.gov/whd/fmla/toc.htm.* An additional source of information came from the Department's Request for Information (RFI) issued on December 1, 2006. The RFI asked the public to comment on their experiences with, and observations of, the Department's administration of the law and the effectiveness of the regulations. The qualitative data obtained provided a detailed anecdotal picture of the workings of the FMLA. The period for conducting this study is expected to last no later than January 14, 2012.

II. Desired Focus of Comments: The Department of Labor is soliciting comments concerning the above data collection for the FMLA Employee and Employer Surveys. Comments are requested which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The DOL is requesting clearance for an employer and employee survey focusing on the Family and Medical Leave Act of 1993.

Type of Review: New Information Collection Request.

Agency: Wage and Hour Division.

Title: Proposed Information Collection (ICR) for the Family Medical Leave Act (FMLA) Employee and Employer Surveys.

OMB Number: None.

Affected Public: Private sector, public sector, individuals, and households.

For the FMLA Employee survey:

Frequency: Once.

Total Responses: 3,000 Respondents.

Average Time per Response: 26 minutes.

Estimated Total Burden Hours: 1,292 hours.

Total Burden Cost: $0.

For the FMLA Employer Survey:

Frequency: Once.

Total Responses: 1,800 firms.

Average Time per Response: 36 minutes.

Estimated Total Burden Hours: 2,164 hours.

Total Burden Cost: $0

Note that, due to rounding, the numbers for the totals may differ from the sum of the component numbers. Comments submitted in response to this request will be summarized and/or included in the request for the Office of Management and Budget approval; they will also become a matter of public record.

Dated: June 2, 2011.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2011–13977 Filed 6–6–11; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on arts participation in the U.S. A copy of the current information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 1, 2011. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

Kathleen Edwards,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2011–13933 Filed 6–6–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on the motivation and barriers associated with attending selected arts activities. A copy

of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before August 1, 2011. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

Kathleen Edwards,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2011–13934 Filed 6–6–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Toward Innovative Spectrum-Sharing Technologies: A Technical Workshop on Coordinating Federal Government/ Private Sector R&D Investments

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Wendy Wigen at 703–292–4873 or *wigen@nitrd.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: July 26, 2011.

SUMMARY: Representatives from Federal research agencies, private industry, and academia will discuss the future research needs for developing innovative spectrum-sharing technologies.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. Agencies of the NITRD Program are holding a technical workshop to bring together experts from private industry and academia to help "create and implement a plan to facilitate research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies, including those that are secure and resilient." The workshop will take place on July 26, 2011 from 8:30 a.m. to 5 p.m. MT in Boulder, Colorado at the U.S. Department of Commerce (DOC) Boulder Labs, 325 Broadway, Building 1 Lobby, Boulder, Colorado 80305. This event will be Webcast. For the event agenda and information about the Webcast, go to: *http://www.its.bldrdoc.gov/isart/WSRD/.*

Background: The dramatic rise of radio frequency-based applications has sparked a new sense of urgency among federal users, commercial service providers, equipment developers, and spectrum management professionals on how best to manage and use the radio spectrum. While near-term solutions such as spectrum re-allocations are critical to meeting national needs, so is the development of the next generation of technologies that can enable more efficient use of the radio spectrum.

NITRD established the Wireless Spectrum Research and Development Senior Steering Group (WSRD–SSG) in late 2010. The committee was asked to identify current spectrum-related research projects funded by the Federal Government, and to work with the non-federal community, including the academic, commercial, and public safety sectors, to implement a plan that "facilitates research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies," in accordance with the Presidential Memorandum on Unleashing the Wireless Broadband Revolution. WSRD–SSG operates under the auspices of the Networking and Information Technology Research and Development (NITRD) program of the National Coordination Office (NCO), and has recently put together a preliminary inventory of federal R&D in the spectrum arena.

This workshop will present an opportunity for relevant interested parties, including technical experts from private industry and public safety, together with academic researchers, to explore ongoing spectrum-related Federal Government R&D activities as listed in the WSRD–SSG inventory, and offer their expertise on developing recommendations for a wireless technology innovation initiative. We will ask private industry participants to suggest research avenues that they believe are presently underrepresented in federal R&D and that are not being pursued in private industry research laboratories. The focus will be on identifying R&D that may have large potential payoffs for wireless technologies and the nation's economy at large, which are consistent with the Federal Government's role in sponsoring important basic and applied research and development. The workshop will also address possible frameworks for supporting long-term research that may result in yet-to-be-conceived improvements in spectrum utilization.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on June 2, 2011.

Suzanne H. Plimpton,

Management Analyst, National Science Foundation.

[FR Doc. 2011–13943 Filed 6–6–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, June 21, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 8240A Marine Accident Report—Collision of Tugboat/Barge Caribbean Sea/The Resource with Amphibious Passenger Vessel DUKW 34, Philadelphia, Pennsylvania, July 7, 2010.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, June 17, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by e-mail at *bingc@ntsb.gov.*

Friday, June 3, 2011.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2011–14121 Filed 6–3–11; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–038; NRC–2008–0581]

Nine Mile Point 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC; Combined License Application for Nine Mile Point 3 Nuclear Power Plant; Exemption

1.0 Background

Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC (UniStar) submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), subpart C of part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." This reactor is to be identified as Nine Mile Point 3 Nuclear Power Plant (NMP3NPP), and located adjacent to the current Nine Mile Point Nuclear Station, Unit 1 and Unit 2, in Oswego County, New York. The NMP3NPP COL application incorporates by reference AREVA NP's application for a Standard Design Certification for the U.S. EPR. Additionally, the NMP3NPP COL application is based upon the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the NMP3NPP COL application on December 12, 2008. On December 1, 2009, UniStar Nuclear Energy (UNE), which is acting on behalf of the COL applicants Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, requested that the NRC temporarily suspend the NMP3NPP COL application review, including any supporting reviews by external agencies, until further notice. Based on this request, the NRC discontinued all review activities associated with the NMP3NPP COL application. The NRC is currently performing a detailed review of the CCNPP3 RCOL application, as well as AREVA NP's application for design certification of the U.S. EPR.

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii), require that an applicant for a combined license under 10 CFR part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's Final Safety Analysis Report (FSAR), which is a part of the application.

On March 31, 2009, UNE submitted Revision 1 to the COL application, including updates to the FSAR. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update was due by December 2010. UNE has requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2010 and 2011 FSAR updates, and proposed for approval a new submittal deadline of December 31, 2012, for the next FSAR update. In addition, UNE has committed to submit an updated FSAR prior to resumption of NRC review for the NMP3NPP COL application.

In summary, the requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next FSAR update at a later date, but still in advance of the NRC reinstating its review of the application, and in any event, by December 31, 2012. The current FSAR update schedule could not be changed, absent the exemption. UNE requested the exemption by letter dated December 9, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103480076). UNE has affirmed that this request letter replaced UNE's previous correspondence of November 18, 2010 (ML103260479), in its entirety, on the same request for exemption from 10 CFR 50.71(e)(3)(iii). The NRC notes that the granting of the exemption applies prospectively, rather than retroactively, so this exemption applies to required actions from the date of exemption issuance and does not retroactively authorize a previous failure to take required action.

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)); or (2) "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The review of the NMP3NPP COL application FSAR has been suspended since December 1, 2009. Since the COL application incorporates by reference the application for a Standard Design Certification for the U.S. EPR, many changes in the U.S. EPR FSAR require an associated change to the COL application FSAR, and because the NRC review of the COL application is suspended, the updates to the COL application FSAR will not be reviewed by the NRC staff until the NMP3NPP COL application review is resumed. Thus, the optimum time to prepare a revision to the COL application FSAR is sometime prior to UNE requesting the NRC to resume its review. To prepare and submit a COL application FSAR update when the review remains suspended and in the absence of any decision by UNE to request the NRC to resume the review, would require UNE to spend significant time and effort and would be of no value, particularly due to the fact that the U.S. EPR FSAR is still undergoing periodic revisions and updates. UNE commits to submit the next FSAR update prior to any request to the NRC to resume review of the COL application and, in any event, by December 31, 2012, and would need to identify all changes to the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the changes to the U.S. EPR FSAR.

The requested one-time schedule exemption to defer submittal of the next update to the NMP3NPP COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). UNE has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by submitting Revision 1 to the COL application on March 31, 2009, prior to requesting the review

suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next NMP3NPP COL application FSAR update on or before December 31, 2012. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting UNE the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by UNE will not be reviewed by the NRC at this time. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow UNE to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2012. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)); or (2) "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit UNE time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the NMP3NPP COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief, and UNE has made good faith efforts to comply with the regulation by submitting Revision 1 to the COL application on March 31, 2009, prior to requesting the review suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application. For the above reasons, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25), and justified by the NRC staff as follows:

10 CFR 51.22:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there are no significant hazards considerations because granting the proposed exemption 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.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents,and

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by UNE and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC

4.0 Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public

health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants UNE a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the NMP3NPP COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2012.

Pursuant to 10 CFR 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment. This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of May 2011.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–13816 Filed 6–6–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Designation of Beneficiary (FERS) [SF 3102]

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0173, Designation of Beneficiary (FERS). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until August 8, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 or sent via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Designation of Beneficiary (FERS) is used by an employee or an annuitant covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Designation of Beneficiary (FERS).

OMB Number: 3206–0173.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 3,110.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 777.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13973 Filed 6–6–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Health Benefits Election Form (OPM 2809)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0141, Health Benefits Election Form. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until August 8, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting) Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 or sent via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street,

NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: OPM 2809 is used by annuitants and former spouses to elect, cancel, suspend, or change health benefits enrollment during periods other than open season.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Health Benefits Election Form.

OMB Number: 3206–0141.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 30,000.

Estimated Time per Respondent: 45 minutes.

Total Burden Houses: 16,667 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13980 Filed 6–6–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 20–120, Request for Change to Unreduced Annuity

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0245, Request for Change to Unreduced Annuity. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until August 8, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 or sent via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, *Attention:* Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 20–120 is designed to collect information the Office of Personnel Management needs to comply with the wishes of the retired Federal employee whose marriage has ended. This form provides an organized way for the retiree to give us everything at one time.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Change to Unreduced Annuity.

OMB Number: 3206–0245.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 5,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 2,500.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13982 Filed 6–6–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Update Existing System of Records

AGENCY: U.S. Office of Personnel Management.

ACTION: Update OPM/GOVT–1, General Personnel Records.

SUMMARY: The U.S. Office of Personnel Management (OPM) proposes to update OPM/GOVT–1, General Personnel Records, System of Records. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4) and (11)).

DATES: This action will be effective without further notice on July 7, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the U.S. Office of Personnel Management, Manager, OCIO/RM, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: U.S. Office of Personnel Management, Manager, OCIO/RM, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The OPM system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register**. The proposed changes include the following: (1) Replaced the words "owned by" with the words "records of" in Note 1, (2) Category of Records in the System "n" removed due to redundancy and coverage in other record categories and Category of Records in the System "o" replaced it to become "n", (3) renumbered Note 6 to Note 8, (4) added a new Note 6—"CPDF and EHRI data system's Central Employee Record (CER) are part of OPM/Govt-1 system of records. CPDF and CER are highly reliable sources of statistical data on the workforce of the Federal government. However, the accuracy and completeness of each data element within the individual records that comprise the aggregate files are not guaranteed, and should not be used as the sole tool or as a substitute for the Official Personnel Folder (OPF) in making personnel determinations or decisions concerning individuals"; (5) the addition of Note 7—"The eOPF Application within EHRI may contain documents and information beyond the scope and requirements of the OPF as documented in OPM's Guide to Personnel Recordkeeping. Those

documents and information in the eOPF Application that are beyond the scope of the documented requirements are not considered part of the OPF or OPM/GOVT–1", (6) removal of a **Federal Register** notice date for OPM's internal system of records referenced in Note 8 due to irrelevancy, (7) the addition of Note 9—"When copies of records become part of an investigative process, those copies become subject to that system's notice covering the investigative process; i.e., if during an investigation, the OPM Federal Investigative Services Division makes copies of records contained in an Official Personnel Folder, those documents become part of OPM Central-9 Personnel Investigation Records system of records and are subject to that system's routine uses, and (8) an update to the System Manager and Address information.

U.S. Office of Personnel Management.

John Berry,

Director.

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located within the employing agency. Records maintained in paper may also be located at OPM or with personnel officers, or at other designated offices of local installations of the department or agency that employs the individual. When agencies determine that duplicates of these records need to be located in a second office, *e.g.,* an administrative office closer to where the employee actually works, such copies are covered by this system. Some agencies have employed the Enterprise Human Resource Integration (EHRI) data system to store their records electronically. Although stored in EHRI, agencies are still responsible for the maintenance of their records.

Former Federal employees' paper Official Personnel Folders (OPFs) are located at the National Personnel Records Center, National Archives and Records Administration (NARA), 111 Winnebago Street, St. Louis, Missouri 63118. Former Federal employees' electronic Official Personnel Folders (eOPF) are located in the EHRI data system that is administered by NARA.

Note 1: The records in this system are records of the OPM and must be provided to those OPM employees who have an official need or use for those records. Therefore, if an employing agency is asked by an OPM employee to access the records within this system, such a request must be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105. (Volunteers, grantees, and contract employees on whom the agency maintains records may also be covered by this system).

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes, but is not limited to, contents of the OPF as specified in OPM's Operating Manual, "The Guide to Personnel Recordkeeping." Records in this system include:

a. Records reflecting work experience, education level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, OPM approval of disability retirement applications, retirement, and removals.

c. Records on participation in the Federal Employees' Group Life Insurance Program and Federal Employees' Health Benefits Program.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note 2: Some of these records may also become part of the OPM/CENTRAL–5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or Senior Executive Service (SES) Candidate Development Program.

Note 3: Some of these records may also become part of the OPM/Central–10 Federal Executive Institute Program Participant Records and OPM/CENTRAL–13 Executive Personnel Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of advancement (*e.g.,* an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with disability, race/ethnicity, national origin, pay, and performance information from other OPM and agency systems of records. A definitive list of CPDF data elements is contained in OPM's Operating Manuals, The Guide to Central Personnel Data File Reporting Requirements and The Guide to Personnel Data Standards.

h. Records on the SES maintained by agencies for use in making decisions affecting incumbents of these positions, *e.g.,* relating to sabbatical leave programs, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note 4: Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT–1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency electronic personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance ratings of record and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT–2 system) maintained by agencies at remote field/administrative offices from where the original records exist are considered part of this system.

Note 5: It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (*e.g.,* in an administrative office or supervisors work folder) and still be covered by this system. In addition, a working file that a supervisor or other agency

official is using that is derived from OPM/GOVT–1 is covered by this system notice. This system also includes working files derived from this notice that management is using in its personnel management capacity.

k. Records relating to designations for lump sum death benefits.

l. Records relating to classified information nondisclosure agreements.

m. Records relating to the Thrift Savings Plan (TSP) concerning the starting, changing, or stopping of contributions to the TSP as well as how the individual wants the investments to be made in the various TSP Funds.

Note 6: CPDF and EHRI data system's Central Employee Record (CER) are part of OPM/GOVT–1 system of records. CPDF and CER are highly reliable sources of statistical data on the workforce of the Federal government. However, the accuracy and completeness of each data element within the individual records that comprise the aggregate files are not guaranteed, and should not be used as the sole tool or as a substitute for the OPF in making personnel determinations or decisions concerning individuals.

Note 7: The eOPF Application within EHRI may contain documents and information beyond the scope and requirements of the OPF as documented in OPM's Guide to Personnel Recordkeeping. Those documents and information in the eOPF Application that are beyond the scope of the documented requirements are not considered part of the OPF or OPM/GOVT–1.

n. Records maintained in accordance with E.O. 13490, section 4(e), January 21, 2009. These records include the ethics pledges and all pledge waiver certifications with respect thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive Orders 9397, as amended by 13478, 9830, and 12107.

PURPOSES:

The OPF, which may exist in various approved media, and other general personnel records files, is the official repository of the records, reports of personnel actions, and the documentation required in connection with these actions affected during an employee's Federal service. The personnel action reports and other documents, some of which are filed in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and agencies in accordance with OPM regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used—

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working in the Student Career Experience Program, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (*e.g.,* State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the OPM or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose information necessary to the Office of Federal Employees Group Life Insurance to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TSP election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

Note 8: The release of updated home addresses of all bargaining unit employees to labor organizations recognized under 5 U.S.C. chapter 71 from an accurate internal system of records is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining under 5 U.S.C. 7114(b)(4). OPM has determined that retrieval of home addresses from OPM/GOVT–1 or any other system of records administered by OPM would yield a great deal of inaccurate information because the home addresses are not regularly updated, and frequently are inaccurate. Consequently, the release of the home addresses from this system would not serve the purpose of the disclosure, namely, the furnishing of correct and useful information. Use of this system, which is not wholly automated, would require an inordinate amount of time to locate information that was not requested, namely, inaccurate home addresses. Accordingly, home addresses will not be released from OPM/GOVT–1 or any other system administered by OPM, but should be released from an accurate internal system.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a

violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

Note 9: When copies of records become part of an investigative process, those copies become subject to that systems' notice covering the investigative process i.e., if during an investigation, the OPM Federal Investigative Services Division makes copies of records contained in an Official Personnel Folder; those documents become part of OPM Central–9 Personnel Investigation Records system of records and are subject to that systems' routine uses.

m. To disclose to a Federal agency in the executive, legislative, or judicial branch of Government, in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance or determination concerning eligibility to hold a sensitive position, the conducting of an investigation for purposes of a credentialing, national security, fitness, or suitability adjudication concerning an individual, the classifying or designation of jobs, the letting of a contract, the issuance of a license, grant, or other benefit by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

p. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. the agency, or any component thereof; or

2. any employee of the agency in his or her official capacity; or

3. any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. the United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections and its role as Archivist.

s. By the agency maintaining the records or by the OPM to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, to provide information in the individual's record to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by the agency under fitness-for-duty examination procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, to investigate representation petitions and to conduct or supervise representation elections, and in connection with

matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (*e.g.*, the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (*e.g.*, to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates to obtain accreditation or other approval rating, or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board Executive Resources Board, or other panel when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance rating of record, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose, either to the Federal Acquisition Institute (FAI) or its agent, information about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the information shall be used only for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the **Federal Register** of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are contained in the Central Personnel Data File to authorized Federal agencies and non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, health plan code, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, to obtain information relevant to an Agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

ll. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a Federal employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self-and-family to a self-only health benefits enrollment.

mm. To disclose information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System and Federal Offset System for use in locating individuals, verifying social security numbers, and identifying their incomes sources to establish paternity, establish and modify orders of support and for enforcement action.

nn. To disclose records on former Panama Canal Commission employees to the Republic of Panama for use in employment matters.

oo. To disclose to appropriate Federal officials pertinent workforce information for use in national or homeland security emergency/disaster response.

pp. To disclose on public and internally-accessible Federal Government Web sites, and to otherwise disclose to any person, including other departments and agencies, the signed ethics pledges and pledge waiver certifications issued under E.O. 13490 of January 21, 2009, Ethics Commitments by Executive Branch Personnel.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media such as personnel system databases, PDF forms and data warehouse systems.

RETRIEVABILITY:

These records are retrieved by various combinations of name, agency, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of user logins and passwords, access codes, and entry logs, to those whose official duties require access. Computerized records systems are consistent with the requirements of the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then, if in a paper format, transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. If the OPF is maintained in an electronic format, the transfer and storage is in accordance with the OPM approved electronic system. Other records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency. The transfer occurs within 90 days of the individuals' separation. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent within 120 days. Destruction of the OPF is in accordance with General Records Schedule-1 (GRS–1) or GRS 20.

Records contained within the CPDF and EHRI (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS–1 or GRS 20, such records should not be used in making decisions concerning employees.

SYSTEM MANAGER AND ADDRESS:

a. Manager, OCIO/RM, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate OPM or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees who want access to their Official Personnel Folders (OPF) should contact the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system. For other records covered by the system notice, individuals should contact their former employing agency.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by—

a. The individual on whom the record is maintained.

b. Educational institutions.

c. Agency officials and other individuals or entities.

d. Other sources of information maintained in an employee's OPF, in accordance with Code of Federal Regulations part 293, and OPM's Operating Manual, "The Guide to Personnel Recordkeeping."

[FR Doc. 2011–13971 Filed 6–6–11; 8:45 am]

BILLING CODE 6325–45–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding two Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of information collection:* Financial Disclosure Statement; OMB 3220–0127.

Under Section 10 of the Railroad Retirement Act (RRA) and Section 2(d) of the Railroad Unemployment Insurance Act, the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR part 255 and CFR part 340.

The RRB utilizes Form DR–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the

information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary. However, failure to provide requested information may result in a denial of the waiver request.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 8384 on February 14, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Financial Disclosure Statement.

OMB Control Number: 3220–0127.

Form(s) submitted: DR–423.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under the Railroad Retirement and the Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

Changes proposed: The RRB proposes no revisions to Form DR–423.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form DR–423 is estimated at 85 minutes.

Estimated annual number of respondents: 1,200.

Total annual responses: 1,200.

Total annual reporting hours: 1,700.

2. *Title and Purpose of information collection:* Statement Regarding Contributions and Support of Children; OMB 3220–0195.

Section 2(d)(4) of the Railroad Retirement Act (RRA), provides, in part, that a child is deemed dependent if the conditions set forth in Section 202(d)(3), (4), and (9) of the Social Security Act are met. Section 202(d)(4) of the Social Security Act, as amended by Public Law 104–121, requires as a condition of dependency, that a child receives one-half of his or her support from the stepparent. This dependency impacts upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. Therefore, depending on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren and step-grandchildren and equitably adopted children. The regulations outlining child support and dependency requirements are prescribed in 20 CFR 222.50–57.

In order to correctly determine if an applicant is entitled to a child's annuity based on actual dependency, the RRB uses Form G–139, Statement Regarding Contributions and Support of Children, to obtain financial information needed to make a comparison between the amount of support received from the railroad employee and the amount received from other sources. Completion is required to obtain a benefit. One response is required of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 8384 on February 14, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support of Children.

OMB Control Number: 3220–0195.

Form(s) submitted: G–139.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Dependency on the employee for at least one-half support is a condition for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren and step-grandchildren. The information collected solicits financial information needed to determine entitlement to a child's annuity based on actual dependency.

Changes proposed: The RRB proposes no changes to Form G–139.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form G–139 is estimated at 60 minutes.

Estimated annual number of respondents: 500.

Total annual responses: 500.

Total annual reporting hours: 500.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Patricia.Henaghan@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Clearance Officer.

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BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–29687; File No. 812–13791]

TIAA–CREF Life Insurance Company, et al.

June 1, 2011.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of application for an order under Section 26(c) of the Investment Company Act of 1940, as amended (the "1940 Act").

APPLICANTS: TIAA–CREF Life Insurance Company ("TC LIFE"), TIAA–CREF Life Separate Account VA–1 ("Separate Account VA–1"), and TIAA–CREF Life Separate Account VLI–1 ("Separate Account VLI–1") (together with, Separate Account VA–1, the "Separate Accounts") (all foregoing parties collectively referred to herein as the "Applicants").

SUMMARY OF APPLICATION: Applicants request an order of the Commission, pursuant to Section 26(c) of the Act, approving the substitution of shares of the Commodity Return Strategy Portfolio of the Credit Suisse Trust (the "Substituted Portfolio") for Class II shares of the Natural Resources Portfolio of The Prudential Series Fund (the "Replacement Portfolio") under certain variable life insurance policies and variable annuity contracts (the "Contracts"), each issued through a Separate Account.

DATES: *Filing Date:* The application was filed on July 7, 2010 and amended and restated on November 3, 2010, January 20, 2011, March 14, 2011, and May 6, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be

received by the Commission by 5:30 p.m. on June 27, 2011, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Ken Reitz, Associate General Counsel, TIAA–CREF Life Insurance Company, 8500 Andrew Carnegie Boulevard, Charlotte, North Carolina 28262–8500.

FOR FURTHER INFORMATION CONTACT: Michael L. Kosoff, Branch Chief, at (202) 551–6754 or Harry Eisenstein, Senior Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. TC LIFE is a stock life insurance company organized under the laws of the State of New York on November 20, 1996. TC LIFE's executive office mailing address is 730 Third Avenue, New York, New York 10017.

2. TC LIFE established Separate Account VA–1 under New York state law on July 27, 1998. Separate Account VA–1 meets the definition of a "separate account" under the Federal securities laws and is registered with the Commission under the Act as a unit investment trust (File No. 811–08963). Separate Account VA–1 consists of 47 subaccounts, each investing in a different investment portfolio and including subaccounts investing in both the Substituted Portfolio and Replacement Portfolio. The subaccount investing in the Substituted Portfolio was closed to additional payments and transfers of contract value on April 12, 2010. The assets of Separate Account VA–1 support Contracts (the "Separate Account VA–1 Contracts") that offer the Substituted Portfolio and the Replacement Portfolio as investment options, and interests in Separate Account VA–1 offered through such Contracts have been registered under the Securities Act of 1933 Act (the "1933 Act") on Form N–4 (File No. 333–145064). Other than the subaccounts investing in the Substituted Portfolio and the two other Credit Suisse portfolios, all of the Separate Account VA–1 subaccounts are currently available under the Separate Account VA–1 Contracts.

3. TC LIFE is the legal owner of the assets in Separate Account VA–1. Pursuant to the Separate Account VA–1 Contracts and prospectuses, TC LIFE reserves the right to substitute shares of one portfolio for shares of another. The terms of the Separate Account VA–1 Contracts and the prospectus for the Separate Account VA–1 Contracts also permit Contract owners to transfer contract value among the subaccounts. TC LIFE does not assess a transfer charge or limit the number of transfers permitted per year, although TC LIFE does have in place market timing policies and procedures that may operate to limit transfers.

4. TC LIFE established Separate Account VLI–1 under New York state law on May 23, 2001. Separate Account VLI–1 meets the definition of a "separate account" under the Federal securities laws and is registered with the Commission under the Act as a unit investment trust (File No. 811–10393). Separate Account VLI–1 consists of 47 subaccounts, each investing in a different investment portfolio and including subaccounts investing in both the Substituted Portfolio and the Replacement Portfolio. The subaccount investing in the Substituted Portfolio was closed to additional payments and transfers of contract value on April 12, 2010. The assets of Separate Account VLI–1 support Contracts (the "Separate Account VLI–1 Contracts") that offer the Substituted Portfolio and the Replacement Portfolio as investment options, and interests in Separate Account VLI–1 offered through such Contracts have been registered under the 1933 Act on Form N–6 (File Nos. 333–128699 and 333–151910). Other than the subaccounts investing in the Substituted Portfolio and the two other Credit Suisse portfolios, all of the Separate Account VLI–1 subaccounts are currently available under the Separate Account VLI–1 Contracts.

5. TC LIFE is the legal owner of the assets in Separate Account VLI–1. Pursuant to the Separate Account VLI–1 Contracts and prospectuses, TC LIFE reserves the right to substitute shares of one portfolio for shares of another. The terms of the Separate Account VLI–1 Contracts and the prospectuses for the Separate Account VLI–1 Contracts also permit Contract owners to transfer contract value among the subaccounts. TC LIFE currently does not assess a transfer charge or limit the number of transfers permitted per year, although TC LIFE does reserve the right to deduct a $25 charge for the thirteenth and each additional transfer during a policy year. Transfers due to dollar cost averaging, automatic account rebalancing, loans, changes in a subaccount's investment policy, or the initial reallocation from a money market subaccount do not count as transfers for the purpose of assessing the transfer charge. Contract owners also must transfer at least $250, or the total value in the allocation option being transferred, if less. TC LIFE also has in place market timing policies and procedures that may operate to limit transfers. TC LIFE also imposes certain restrictions on transfers from the fixed account.

6. Credit Suisse Trust was organized on March 15, 1995 under the laws of the Commonwealth of Massachusetts as a Massachusetts business trust. It is registered under the Act as a open-end management investment company (File No. 811–07261). Credit Suisse Trust currently consists of three portfolios, one of which—the Commodity Return Strategy Portfolio—is the Substituted Portfolio. The Credit Suisse Trust issues a separate series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A (File No. 33–58125). Credit Suisse Asset Management, LLC ("Credit Suisse Management") serves as the investment adviser to each portfolio of the Credit Suisse Trust.

7. The Prudential Series Fund is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company (File No. 811–03623). The Prudential Series Fund currently consists of 19 separate portfolios, one of which—the Natural Resources Portfolio—is the Replacement Portfolio. The Prudential Series Fund issues a separate series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A (File No. 2–80896). Prudential Investments LLC ("P.I."), a wholly-owned subsidiary of Prudential Financial, Inc., serves as the investment adviser to each portfolio of The Prudential Series Fund and receives an investment management fee from each portfolio it manages.

8. Prudential Mutual Fund Management, Inc. ("PMFM"), the former investment adviser to funds sponsored by Prudential Financial, Inc. and its affiliates, obtained an order from the Commission pursuant to Section 6(c) of

the Act exempting it from Section 15(a) of the Act and Rule 18f–2 under the Act, with respect to subadvisory agreements (the "Manager of Managers Order").[1]

9. The Manager of Managers Order applies not only to the specific applicants but also to any future open-end management investment company advised by PMFM or a person controlling, controlled by, or under common control with PMFM, provided that such investment company operates in substantially the same manner as the applicant investment company and complies with the condition of the Manager of Managers Order. More particularly, Applicants believe that the Manager of Managers Order permits P.I. to enter into and materially amend investment subadvisory agreements with respect to The Prudential Series Fund without obtaining shareholder approval. For this reason, the Applicants believe that the relief granted in the Manager of Managers Order extends to the Natural Resources Portfolio.

10. Neither the Substituted Portfolio nor the Replacement Portfolio nor their investment advisers are affiliated with the Applicants.

11. The following charts set out the investment objective of the Substituted Portfolio and the Replacement Portfolio, as stated in their respective prospectuses dated May 1, 2011.

Substituted portfolio	Replacement portfolio
Credit Suisse Trust Commodity Return Strategy Portfolio	**Prudential Series Fund Natural Resources Portfolio (Class II Shares)**
Investment Objective	**Investment Objective**
Seeks total return relative to the performance of the Dow Jones-UBS Commodity Index Total Return ("DJ–UBS Index").	Seeks long-term growth of capital.

The following information sets out the current principal investment strategies of the Substituted Portfolio and the Replacement Portfolio, as stated in their respective prospectuses and/or Statements of Additional Information ("SAI") dated May 1, 2011.

Substituted portfolio	Replacement portfolio
Credit Suisse Trust Commodity Return Strategy Portfolio	**Prudential Series Fund Natural Resources Portfolio (Class II Shares)**
Principal Investment Strategies	**Principal Investment Strategies**
The Portfolio is designed to achieve positive total return relative to the performance of the Dow Jones-UBS Commodity Index Total Return ("DJ–UBS Index"). The Portfolio intends to invest its assets in a combination of commodity-linked derivative instruments and fixed income securities. The Portfolio gains exposure to commodities markets by investing in structured notes whose principal and/or coupon payments are linked to the DJ–UBS Index.	The Portfolio normally invests at least 80% of its net assets (plus any borrowings made for investment purposes) in common stocks and convertible securities of natural resource companies and securities that are related to the market value of some natural resource.
The Portfolio may invest up to 25% of its total assets in a wholly owned subsidiary of the Portfolio formed in the Cayman Islands (the "Subsidiary"), which has the same investment objective as the Portfolio and has a strategy of investing in commodity-linked swap agreements and other commodity-linked derivative instruments, futures contracts on individual commodities, or a subset of commodities and options on commodities.	Natural resource companies are companies that primarily own, explore, mine, process or otherwise develop natural resources, or supply goods and services to such companies. Natural resources generally include agricultural commodities, precious metals, such as gold, silver and platinum, ferrous and nonferrous metals, such as iron, aluminum and copper, strategic metals such as uranium and titanium, hydrocarbons such as coal and oil, timberland and undeveloped real property.
The Portfolio invests in a portfolio of fixed income securities normally having an average duration of one year or less, and emphasizes investment-grade fixed income securities.[2]	The Portfolio seeks securities with an attractive combination of valuation versus peers, organic reserve and production growth, and competitive unit cost structure.
The Portfolio is a non-diversified mutual fund portfolio, meaning the Portfolio may invest a relatively high percentage of its assets in a small number of issuers.[3]	Up to 20% of the Portfolio's total assets may be invested in securities that are not asset-indexed or natural resource-related, including common stock, convertible stock, debt securities and money market instruments.
	Up to 50% of the Portfolio's total assets may be invested in foreign equity and equity-related securities.
	The Portfolio may also pursue the following types of investment strategies and/or invest in the following types of securities: (i) Alternative investment strategies—including derivatives—to try and improve the Portfolio's returns, to protect its assets or for short-term cash management. Derivatives includes options, futures contracts, swaps and swap options; (ii) forward foreign currency exchange contracts; (iii) purchase securities on a when-issued or delayed delivery basis; (iv) short sales against-the-box; (v) repurchase agreements. The Portfolio may participate with certain other portfolios of the Fund in a joint repurchase account under an order obtained from the SEC; and (vi) illiquid securities.
	Under normal circumstances, the Portfolio may invest up to 20% of its net assets in money market instruments.

[1] The Target Portfolio Trust and Prudential Mutual Fund Management, Inc., Act Rel. No. 22215 (Sept. 11, 1996) (Order), File No. 812–10208.

Substituted portfolio	Replacement portfolio
	The Portfolio is a non-diversified mutual fund portfolio, meaning the Portfolio may invest a relatively high percentage of its assets in a small number of issuers.[4] The Portfolio will concentrate its investments (*i.e.,* will invest at least 25% of its assets under normal circumstance) in securities of companies in the natural resources group of industries.

12. The following sets out the principal investment risks of the Substituted Portfolio and the Replacement Portfolio, as stated in their respective prospectuses and/or SAIs dated May 1, 2011.

The Commodity Return Strategy Portfolio is subject to the following principal investment risks:

• *Commodity Risk.* The Portfolio's investment in commodity-linked derivative instruments may subject the Portfolio to greater volatility than investments in traditional securities, particularly if the instruments involve leverage. The value of commodity-linked derivative instruments may be affected by changes in overall market movements, commodity index volatility, changes in interest rates, or factors affecting a particular industry or commodity, such as drought, floods, weather, livestock disease, embargoes, tariffs, and international economic, political, and regulatory developments. Use of leveraged commodity-linked derivatives creates an opportunity for increased return but, at the same time, creates the possibility for greater loss (including the likelihood of greater volatility of the portfolio's net asset value), and there can be no assurance that the portfolio's use of leverage will be successful.

• *Correlation Risk.* Changes in the value of a hedging instrument may not match those of the investment being hedged. In addition, commodity-linked structured notes may be structured in a way that results in the portfolio's performance diverging from the DJ–UBS Index, perhaps materially. For example, a note can be structured to limit the loss or the gain on the investment, which would result in the portfolio not participating in declines or increases in the DJ–UBS Index that exceed the limits.

• *Credit Risk.* The issuer of a security or the counterparty to a contract, including derivatives contracts, may default or otherwise become unable to honor a financial obligation.

• *Derivatives Risk.* Derivatives are financial contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate, or index. The Portfolio typically uses derivatives as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. The Portfolio may also use derivatives for leverage. The Portfolio's use of derivative instruments, particularly commodity-linked derivatives, involves risks different from, or possibly greater than, the risks associated with investing directly in securities and other traditional investments. Derivatives are subject to a number of risks, such as commodity risk, correlation risk, liquidity risk, interest-rate risk, market risk, and credit risk. Also, suitable derivative transactions may not be available in all circumstances and there can be no assurance that the portfolio will engage in these transactions to reduce exposure to other risks that would be beneficial.

• *Exposure Risk.* There is a risk associated with investments (such as derivatives) or practices (such as short selling) that increase the amount of money the portfolio could gain or lose on an investment. Exposure risk could multiply losses generated by a derivative or practice used for hedging purposes. Such losses should be substantially offset by gains on the hedged investment. However, while hedging can reduce or eliminate losses, it can also reduce or eliminate gains. To the extent that a derivative or practice is not used as a hedge, the Portfolio is directly exposed to its risks. Gains or losses from speculative positions in a derivative may be much greater than the derivative's original cost. For example, potential losses from writing uncovered call options and from speculative short sales are unlimited.

• *Extension Risk.* An unexpected rise in interest rates may extend the life of a fixed income security beyond the expected payment time, typically reducing the security's value.

• *Focus Risk.* The Portfolio will be exposed to the performance of commodities in the DJ–UBS Index, which may from time to time have a small number of commodity sectors (*e.g.,* energy, metals or agricultural) representing a large portion of the index. As a result, the Portfolio may be subject to greater volatility than if the index were more broadly diversified among commodity sectors.

• *Interest Rate Risk.* Changes in interest rates may cause a decline in the market value of an investment. With bonds and other fixed-income securities, a rise in interest rates typically causes a fall in values, while a fall in interest rates typically causes a risk in values.

• *Liquidity Risk.* Certain portfolio securities, such as commodity-linked notes and swaps, may be difficult or impossible to sell at the time and the price that the Portfolio would like. The Portfolio may have to lower the price, sell other securities instead, or forgo an investment opportunity. Any of these could have a negative effect on portfolio management or performance.

• *Market Risk.* The market value of a security may fluctuate, sometimes rapidly and unpredictably. These fluctuations, which are often referred to as "volatility," may cause a security to be worth less than it was worth at an earlier time. Market risk may affect a single issuer, industry, commodity, sector of the economy, or the market as a whole. Market risk is common to most investments, including: stocks, bonds

[2] While not identified as a principal investment strategy in the prospectus, the Portfolio also may invest without limit in U.S. dollar-denominated foreign securities and may invest up to 30% of its assets in non-U.S. dollar denominated securities.

[3] The Commodity Return Strategy Portfolio's investments will be limited, however, in order to qualify as a "regulated investment company" for purposes of the Internal Revenue Code. The Portfolio has obtained a private letter ruling from the Internal Revenue Service confirming that the income produced by certain types of commodity-index linked structured notes constitutes qualifying income for purposes of qualifying as a "regulated investment company." To qualify, the Portfolio complies with certain requirements, including limiting its investments so that at the close of each quarter of the taxable year (i) not more than 25% of the market value of its total assets are invested in the securities of a single issuer, and (ii) with respect to 50% of the market value of its total assets, not more than 5% of the market value of its total assets are invested in the securities of a single issuer and the portfolio does not own more than 10% of the outstanding voting securities of a single issuer.

[4] The Natural Resources Portfolio may not purchase any security (other than obligations of the U.S. government, its agencies or instrumentalities) if, as a result of such purchase, 25% or more of the Portfolio's total assets (determined at the time of investment) would be invested in any one industry; provided, however, that the Portfolio will concentrate its investment in securities of companies in the natural resources group of industries.

and commodities, and the mutual funds that invest in them.

• *Non-diversified Status.* The Portfolio is considered a non-diversified investment company under the Act and is permitted to invest a greater proportion of its assets in the securities of a smaller number of issuers. As a result, the portfolio may be subject to greater volatility with respect to its portfolio securities than a fund that is diversified.

• *Subsidiary Risk.* By investing in the Credit Suisse Cayman Commodity Fund II, Ltd. (the "Subsidiary"), the Portfolio is indirectly exposed to the risks associated with the Subsidiary's investments. The derivatives and other investments held by the Subsidiary are generally similar to those that are permitted to be held by the Portfolio and are subject to the same risks that apply to similar investments if held directly by the Portfolio. There can be no assurance that the investment objective of the Subsidiary will be achieved. The Subsidiary is not registered under the Act and is not subject to all the investor protections of the Act. However, the Portfolio wholly owns and controls the Subsidiary, and the Portfolio and the Subsidiary are both managed by Credit Suisse Asset Management, LLC, making it unlikely that the Subsidiary will take action contrary to the risks of the Portfolio and its shareholders. Changes in the laws of the United States and/or the Cayman Islands could result in the inability of the Portfolio and/or the Subsidiary to operate as it does currently and could adversely affect the Portfolio.

• *Tax Risk.* Any income the Portfolio derives from direct investments in commodity-linked swaps or certain other commodity-linked derivatives must be limited to a maximum of 10% of the portfolio's gross income in order for the portfolio to maintain its pass through tax status. The Portfolio has obtained a private letter ruling from the Internal Revenue Service (the "IRS") confirming that the income produced by certain types of structured notes constitutes "qualifying income" under the Internal Revenue Code. In addition, the IRS has issued a private letter ruling to the Portfolio confirming that income derived from the Portfolio's investment in its Subsidiary will also constitute qualifying income to the Portfolio. Based on such rulings, the Portfolio seeks to gain exposure to the commodity markets primarily through investments in commodity index-linked notes and, through investments in the Subsidiary, commodity-linked swaps and commodity futures.

• *Portfolio Turnover Risk.* Active and frequent trading increases transaction costs, which could detract from the portfolio's performance.

• *CFTC Regulatory Risk.* Regulatory changes could adversely affect the portfolio by limiting its trading activities in futures and increasing Fund expenses. On February 11, 2011, the Commodity Futures Trading Commission ("CFTC") published a rule proposal that would limit the Fund's ability to use futures in reliance on certain CFTC exemptions. If the new rule is adopted as proposed, the amended CFTC exemption would limit the portfolio's use of futures to (i) bona fide hedging transactions, as defined by the CFTC, and (ii) speculative transactions, provided that the speculative positions do not exceed 5% of the liquidation value of the portfolio. If the portfolio could not satisfy the requirements for the amended exemption, the disclosure and operations of the portfolio would need to comply with all applicable regulations governing commodity pools. Other potentially adverse regulatory initiatives could develop.

The Natural Resources Portfolio is subject to the following principal investment risks:

• *Derivatives Risk.* The use of derivatives involves a variety of risks. There is a risk that the counterparty on a derivative transaction will be unable to honor its financial obligation to the Portfolio. Certain derivatives and related trading strategies create debt obligations similar to borrowings and, therefore, create leverage which can result in losses to a Portfolio that exceed the amount the Portfolio originally invested. Certain exchange-traded derivatives may be difficult or impossible to buy or sell at the time that the seller would like or at the price that the seller believes the derivative is currently worth. Privately negotiated derivatives may be difficult to terminate or otherwise offset. Derivatives used for hedging may reduce losses but also reduce or eliminate gains and cause losses if the market moves in a manner different from that anticipated by the Portfolio. Furthermore, commodity-linked derivative instruments may be more volatile than the prices of investments in traditional equity and debt securities.

• *Equity Securities Risk.* There is a risk that the value or price of a particular stock or other equity or equity-related security owned by the Portfolio could go down. In addition to an individual stock losing value, the value of the equity markets or a sector of those markets in which the Portfolio invests could go down.

• *Expense Risk.* The actual cost of investing in the Portfolio may be higher than the expenses shown in the Annual Portfolio Operating Expenses.

• *Foreign Investment Risk.* Investment in foreign securities generally involves more risk than investing in securities of U.S. issuers. Changes in currency exchange rates may affect the value of foreign securities held by the Portfolio. Securities of issuers located in emerging markets tend to have volatile prices and may be less liquid than investments in more established markets. Moreover, foreign markets generally are more volatile than U.S. markets, are not subject to regulatory requirements comparable to those in the U.S., and are subject to differing custody and settlement practices. Foreign financial reporting standards usually differ from those in the U.S., and foreign exchanges are smaller and less liquid than the U.S. market. Political developments may adversely affect the value of a Portfolio's foreign securities, and foreign holdings may be subject to special taxation and limitations on repatriating investment proceeds.

• *Industry/Sector Risk.* A portfolio that invests in a single market sector or industry can accumulate larger positions in a single issuer or an industry sector. As a result, the Portfolio's performance may be tied more directly to the success or failure of a small group of portfolio holdings.

• *Liquidity and Valuation Risk.* From time to time, the Portfolio may hold one or more securities for which there are no or few buyers and sellers or which are subject to limitations on transfer. The Portfolio also may have difficulty disposing of those securities at the values determined by the Portfolio for the purpose of determining the Portfolio's net asset value, especially during periods of significant net redemptions of Portfolio shares.

• *Market and Management Risk.* Markets in which the Portfolio invests may experience volatility and go down in value, and possibly sharply and unpredictably. All decisions by an adviser require judgment and are based on imperfect information. Additionally, the investment techniques, risk analysis and investment strategies used by an adviser in making investment decisions for the Portfolio may not produce the desired results.

• *Non-diversification Risk.* As a non-diversified portfolio, the Portfolio may hold larger positions in single issuers than a diversified fund. Because the Portfolio is not required to meet diversification requirements that are applicable to some funds, there is an

increased risk that the Portfolio may be adversely affected by the performance of relatively few securities or the securities of a single issuer.

13. The following charts compare the investment management fees and total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2010, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio.

	Substituted portfolio Credit Suisse Trust Commodity Return Strategy portfolio	Replacement portfolio Prudential Series Fund Natural Resources portfolio (class II)
Investment Management Fees	[5] 0.50%	0.45%
Distribution and Service (12b–1) Fee	0.25%	0.25%
Administration Fees	None	0.15%
Other Expenses	0.34%	0.05%
Total Operating Expenses	1.09%	0.90%
Less Expense Waivers and Reimbursements	N/A	N/A
Total Net Operating Expenses	1.09%	0.90%

14. The following charts compare the average annual total returns of the Substituted Portfolio and the Replacement Portfolio for the one-year, five-year, and ten-year (or since inception) periods ended December 31, 2010.

	Substituted portfolio Credit Suisse Trust Commodity Return Strategy portfolio	Replacement portfolio Prudential Fund Series Natural Resources portfolio
Average Annual Total Return for One Year	+16.66%	+27.48%
Average Annual Total Return for Five Years	N/A	13.61%
Average Annual Total Return for Ten Years or, if less, Since Inception	2.98% (Date of Inception:. February 28, 2006).	+20.25% (Date of Inception: April 28, 2005)

15. The following charts compare the levels of net assets (rounded to the nearest thousand) of the Substituted Portfolio and the Replacement Portfolio on December 31, 2010 and the prior four calendar years, as well as the levels of net assets of the Separate Accounts invested in the Substituted Portfolio for the same time period and the percentage of the Substituted Portfolio's total net assets represented by the investments of the Separate Accounts.

	Substituted portfolio			Replacement portfolio Prudential Fund Series Natural Resources portfolio total net assets (in thousands)
	Credit Suisse Trust Commodity Return Strategy portfolio			
	Total separate account assets invested in the portfolio	Percent of portfolio total net assets represented by separate account investment	Total net assets (in thousands)	
On 12/31/2010	$1,671,571	1.34%	$124,550	$1,360.056
On 12/31/2009	1,713,589	1.58%	108,211	1,079,600
On 12/31/2008	424,299	0.61%	69,919	677,400
On 12/31/2007	21,813	0.04%	56,624	1,669,900
On 12/31/2006	287	0.0002%	[6] 145,907	1,193,000
On 12/31/2005	N/A	N/A	N/A	1,016,300

16. Applicants represent that the Substitution is part of an overall business goal of TC LIFE to make the Contracts more attractive to Contract owners and to assure a consistency in the range of overall investment options provided by the Contracts. Pursuant to this goal, TC LIFE has engaged in a thorough review of the efficiencies and structures of all of the investment options it offers under the Contracts. This review involved an evaluation of the investment objectives and strategies, asset sizes, expense ratios, investment performance, investment process, and

[5] Management fee of the Commodity Return Strategy Portfolio and the Credit Suisse Cayman Commodity Fund II, Ltd. (the "Subsidiary").

[6] For the period February 28, 2006 (commencement of operations) through December 31, 2006.

investment teams responsible for the management of each investment option, with a view to past performance as well as future expectations. Based on this evaluation, TC LIFE has determined that the Substituted Portfolio warrants replacement.

17. Applicants represent that TC LIFE reviewed all of the underlying fund options with the goal of ensuring that Contract owners would be provided with investment options under their Contracts following the Substitution that are similar to the investment options under their Contracts before the Substitution. Based in particular on a better performance record and lower total expenses of the Replacement Portfolio, TC LIFE believes that the adviser to the Replacement Portfolio is better able to offer the potential for consistent above-average performance for the Portfolio than is the adviser to the Substituted Portfolio. The Replacement Portfolio also is considerably larger than the Substituted Portfolio, thus offering better economies of scale with a larger asset base over which to spread the various portfolio costs ultimately passed on to Contract owners. As such, TC LIFE believes that effecting the Substitution will provide Contract owners with a Replacement Portfolio that has a comparable investment objective to the Substituted Portfolio but is, overall, less expensive, consistent with the desired asset class exposure, better positioned to provide consistent above-average performance, and with greater expectations for growth. Moreover, TC LIFE maintains that the investment objective and policies of the Replacement Portfolio are sufficiently similar to those of the Substituted Portfolio so that Contract owners will have reasonable continuity in investment expectations.

18. Applicants seek the Commission's approval under Section 26(c) to engage in the substitution transaction described below. Pursuant to its authority under the respective Contracts and the prospectuses describing the same, and subject to the approval of the Commission under Section 26(c) of the Act, TC LIFE proposes to substitute shares of the Commodity Return Strategy Portfolio of the Credit Suisse Trust for Class II Shares of the Natural Resources Portfolio of The Prudential Series Fund.

19. Applicants represent that TC LIFE will effect the Substitution as soon as practicable following the issuance of the requested order as follows. As of the effective date of the Substitution (the "Effective Date"), shares of the Substituted Portfolio will be redeemed for cash and that cash will be used to purchase shares of the Replacement Portfolio. Redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. All redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with Section 22(c) of the Act and Rule 22c–1 thereunder. The Substitution will take place at relative net asset value as of the Effective Date with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts.

20. Applicants represent that contract values attributable to investments in the Substituted Portfolio will be transferred to the Replacement Portfolio without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge. Contract owners will not incur any additional fees or charges as a result of the Substitution, nor will their rights or TC LIFE's obligations under the Contracts be altered in any way, and the Substitution will not change Contract owners' insurance benefits under the Contracts. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by TC LIFE. In addition, the Substitution will not impose any tax liability on Contract owners. The Substitution will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the Substitution than before the Substitution. TC LIFE will not exercise any right it may have under the Contracts to impose a transfer charge or restrictions on transfers under the Contracts for the period beginning on the date the initial application was filed with the Commission through at least thirty (30) days following the Effective Date for transfers of contract value from the subaccount investing in the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to one or more other subaccount(s).[7]

21. The Applicants represent that they will not receive, for three years from the date of the Substitution, any direct or indirect benefits from the Replacement Portfolio, its advisors or underwriters (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than Applicants have received from the Substituted Portfolio, its advisors or underwriters (or their affiliates), including without limitation Rule 12b–1 fees, shareholder service, administration, or other service fees, revenue sharing, or other arrangements in connection with such assets. Applicants represent that the Substitution and the selection of the Replacement Portfolio were not motivated by any financial consideration paid or to be paid to TC LIFE or its affiliates by the Replacement Portfolio, its advisors, underwriters, or their respective affiliates.

22. The Applicants assert that the procedures to be implemented are sufficient to assure that each Contract owner's cash values immediately after the Substitution shall be equal to the cash value immediately before the Substitution.

23. The Applicants represent that Existing Contract owners as of the date the initial application was filed, and new Contract owners who have purchased or who will purchase a Contract subsequent to that date but prior to the Effective Date, have been or will be notified of the proposed Substitution by means of a prospectus or prospectus supplement for each of the Contracts ("Pre-Substitution Notice"). The Pre-Substitution Notice:

- States that the Applicants filed the application to seek approval of the Substitution;
- Sets forth the anticipated Effective Date;
- Explains that contract values attributable to investments in the Substituted Portfolio would be transferred to the Replacement Portfolio on the Effective Date; and
- States that, from the date the initial application was filed with the Commission through the date thirty (30) days after the Substitution, Contract owners may transfer contract value from the subaccount investing in the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to one or more other subaccount(s) without a transfer charge and without that transfer counting against their contractual transfer limitations.

Further, all Contract owners will have received a copy of the most recent prospectus for the Replacement Portfolio prior to the Substitution.

24. Finally, the Applicants represent that within five (5) days following the Substitution, Contract owners affected by the Substitution will be notified in writing that the Substitution was carried

[7] One exception to this would be restrictions that TIAA–CREF may impose to prevent or restrict "market timing" activities by Contract owners or their agents.

out. This notice will restate the information set forth in the Pre-Substitution Notice, and will also explain that the contract values attributable to investments in the Substituted Portfolio were transferred to the Replacement Portfolio without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge.

25. Applicants represent that Section 26(c) of the Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act. Section 26(c) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial premium, an additional sales load upon reinvestment of the proceeds of redemption, or both.[8] The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. For the reasons described below, the Applicants submit that the Substitution meets the standards set forth in Section 26(c) and that, if implemented, the Substitution would not raise any of the aforementioned concerns that Congress intended to address when the Act was amended to include this provision. In addition, the Applicants submit that the proposed Substitution meets the standards that the Commission and its Staff have applied to substitutions that have been approved in the past.

26. Applicants represent that the replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the Act.

[8] House Comm. Interstate Commerce, Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong. 2d Session 337 (1966).

27. The Applicants assert that the investment objective and principal investment strategies of the Replacement Portfolio are substantially similar to those of the Substituted Portfolio. The Commodity Return Strategy Portfolio seeks total return relative to the performance of the DJ–UBS Index, and the Natural Resources Portfolio seeks long-term growth of capital. Applicants submit that these are substantially similar investment objectives and, while the Portfolios' principal investment strategies are somewhat different, there is nonetheless a high correlation between the two sets of investment strategies. The Commodity Return Strategy Portfolio is designed to achieve positive total return relative to the performance of the DJ–UBS Index by investing in commodity-linked derivative instruments and fixed income securities, whereas the Natural Resources Portfolio normally invests at least 80% of its net assets in common stocks and convertible securities of natural resource companies and securities that are related to the market value of some natural resource. However, the companies in which the Natural Resources Portfolio invests derive the vast majority of their respective revenue from commodities. In other words, the valuation of the companies in which the Natural Resources Portfolio invests move directly with the underlying commodities that represent these firms' primary businesses. As such, there is a high correlation between the Natural Resources Portfolio's performance to the price changes in the DJ–UBS Index which underlies the Commodity Return Strategy Portfolio's investment strategy. This high correlation is demonstrated by comparing the performance of investments in natural resources companies (as measured by the S&P North American Natural Resources Index) and commodities (as measured by DJ–UBS Index), for which the correlation (as reported by Morningstar) exceeds 80% over both the trailing three-year and five-year periods. Given the high correlation between the performance of the Natural Resources Portfolio and the Commodity Return Strategy Portfolio, the Applicants believe that the Natural Resources Portfolio is a suitable replacement for the Commodity Return Strategy Portfolio. While the holdings of companies in which the Natural Resources Portfolio invests, with their resultant capital structures, tax exposures, and idiosyncratic risks, do not provide a perfect correlation to a spot commodities index, Applicants believe the same is true with a portfolio comprised of structured notes tied to commodities futures. Accordingly, the Applicants believe that the close approximation of the Natural Resources Portfolio to the commodities sector exposure supports a determination that the Natural Resources Portfolio will provide Contract owners currently invested in the Commodity Return Strategy Portfolio an acceptable level of exposure to the commodities sector and is a reasonable substitution for the Commodity Return Strategy Portfolio.

28. The Applicants represent that, although not identical, the principal investment risks of the Natural Resources Portfolio are comparable to those of the Commodity Return Strategy Portfolio. Both Portfolios use derivatives, exposing each Portfolio to a number of specific derivative-related risks such as the possibility that the counterparty to the transaction is unable to honor its financial obligation; using derivatives may also subject each Portfolio to other more general risks including commodity risk, correlation risk, liquidity risk, interest-rate risk, market risk, and credit risk. Because both Portfolios may invest in foreign securities, they also are subject to increased risk relating to currency exchange rate fluctuations, price volatility, adverse political developments, *etc.* Both Portfolios also are subject to market risk relating to increased and/or unpredictable fluctuations in the market value of the securities in which they invest, as well as to liquidity risk. Finally, both the Natural Resources Portfolio and the Commodity Return Strategy Portfolio are non-diversified investment companies, and therefore may invest in fewer issuers and be more greatly affected by the performance of relatively few securities. Further, the Applicants do not believe that overall the Natural Resources Portfolio is exposed to greater risk than the Commodity Return Strategy Portfolio, despite the fact that certain enumerated risks of the Natural Resources Portfolio are not explicitly detailed as principal investment risks in the prospectus for the Commodity Return Strategy Portfolio. For example, the Applicants believe that the Commodity Return Strategy Portfolio, like the Natural Resources Portfolio, is subject to commodity price risk, expense risk, industry/sector risk, and valuation risk—all typical risks that are generally present for most portfolios that invest in the commodity and natural resources asset categories. Moreover, the Natural Resources Portfolio is not subject to the specific

derivative, tax, and focus risks the Commodity Return Strategy Portfolio is exposed to as a result of the latter's primary investment in commodity-linked instruments. Lastly, because the Commodity Return Strategy Portfolio invests in the Credit Suisse Cayman Commodity Fund II, Ltd., the Portfolio also is indirectly exposed to the risks associated with that portfolio's investments.

29. The Applicants represent that the investment management fee of the Natural Resources Portfolio is lower than that of the Commodity Return Strategy Portfolio, and each Portfolio imposes a 12b–1 fee of 0.25%. Moreover, total operating expenses of the Natural Resources Portfolio were lower than those of the Commodity Return Strategy Portfolio as of December 31, 2010.

30. The Applicants represent that the Natural Resources Portfolio outperformed the Commodity Return Strategy Portfolio for the one-year period ending December 31, 2010 and since inception. In addition, the assets of the Natural Resources Portfolio have been consistently (and significantly) higher than those of the Commodity Return Strategy Portfolio as of December 31, 2010 and for each of the prior four calendar years.

31. For purposes of the approval sought pursuant to Section 26(c) of the Act, the Applicants represent that the Substitution will not be completed unless all of the following conditions are met.

• The Commission shall have issued an order approving the Substitution under Section 26(c) of the Act as necessary to carry out the transactions described in the Application.

• Each Contract owner will have been sent (i) prior to the Effective Date, a copy of the effective prospectus for the Replacement Portfolio, (ii) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitution and the rights of the Contract owners in connection with the Substitution, and (iii) within five (5) days after the Substitution occurs, a notice informing Contract owners affected by the Substitution that the Substitution was carried out (this notice will restate the information set forth in the Pre-Substitution Notice, and also explain that the contract values attributable to investments in the Substituted Portfolio were transferred to the Replacement Portfolio without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge).

• The Applicants have satisfied themselves that (i) the Contracts allow the substitution of the Portfolios in the manner contemplated by the Substitution and related transactions described herein, (ii) the transactions can be consummated as described in the Application under applicable insurance laws, and (iii) any applicable regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

32. The Applicants acknowledge that reliance on exemptive relief, if granted, depends upon compliance with all of the representations and conditions set forth in the Application.

Conclusion

Applicants assert that, for all the reasons stated in the Applicant, the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy of the Contracts and provisions of the Act and that the requested order should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13995 Filed 6–6–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64577; File No. SR–BX–2011–028]

Self-Regulatory Organizations; The NASDAQ OMX BX Inc. LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Correction of an Inadvertent Error in Exchange Rule 7019(c)

June 1, 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 20, 2011, The NASDAQ BX OMX, Inc. LLC ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. 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 the Substance of the Proposed Rule Change

BX proposes to make a correction to the definition of "Direct Access" in Exchange Rule 7019(c). The Exchange proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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 proposes to make a correction to Exchange Rule 7019(c) of its Market Data Distributor Fees rule to correct an inadvertent error in the definition of "Direct Access" contained in a recent filing ("previous filing").[3] The previous filing intended to amend the fee schedule to correct an anomaly that effectively exempted certain customers residing within the Exchange's co-location facility from paying a monthly fee for direct access to Exchange data, while customers that received data from an extranet and resided outside the co-location facility were assessed the fee. The previous filing also deleted outdated verbiage in the fee schedule in order to eliminate confusion regarding application of the fees. However, the rule language contained an inadvertent error that effectively still exempts certain co-located customers receiving Exchange data feeds from paying a direct access fee.

The definition should be corrected to make clear that the definition of "Direct

[3] Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029, (December 10, 2010) (SR–BX–2010–081).

Access" is also applicable to a telecommunications interface with the Exchange for receiving Exchange data feeds (and not Exchange data) within the Exchange co-location facility as well. The Exchange is making this change due to an inadvertent clerical error in the previous filing and is making no other changes to Exchange Rule 7019.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is to correct an inadvertent error in the definition of "Direct Access" in Exchange Rule 7019(d) of its Market Data Distributor Fees rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that its proposal should become immediately effective.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–028. 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.shtm*l). 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–028, and should be submitted on or before June 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy Ahn,

Deputy Secretary.

[FR Doc. 2011–13926 Filed 6–6–11; 8:45 am]

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[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b 4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64578; File No. SR–Phlx–2011–71]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Correction of an Inadvertent Error in the Fee Schedule

June 1, 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 20, 2011, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a correction to the definition of "Direct Access" in the fee schedule. The Exchange shall implement this rule proposal immediately.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a correction to the PHLX Fee Schedule, Section IX, entitled "NASDAQ OMX PSX FEES" under the "Market Data Distributor Fees" section to correct an inadvertent error in the definition of "Direct Access" contained in a recent filing ("previous filing").[3] The previous filing intended to amend the fee schedule to correct an anomaly that effectively exempted certain customers residing within the Exchange's co-location facility from paying a monthly fee for direct access to Exchange data, while customers that received data from an extranet and resided outside the co-location facility were assessed the fee. The previous filing also deleted outdated verbiage in the fee schedule in order to eliminate confusion regarding application of the fees. However, the rule language contained an inadvertent error that effectively still exempts certain co-located customers receiving Exchange data feeds from paying a direct access fee.

The definition should be corrected to make clear that the definition of "Direct Access" is also applicable to a telecommunications interface with the Exchange for receiving Exchange data feeds (and not Exchange data) within the Exchange co-location facility as well. The Exchange is making this change due to an inadvertent clerical error in the previous filing and is making no other changes to Section IX.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is to correct an inadvertent error in the definition of "Direct Access" in Section IX of its Fee Schedule.

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, as amended.

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

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that its proposal should become immediately effective.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–2011–71 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–2011–71. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–71 and should be submitted on or before June 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13939 Filed 6–6–11; 8:45 am]

BILLING CODE 8011–01–P

[3] Securities Exchange Act Release No. 63443 (December 6, 2010), 75 FR 77028, (December 10, 2010) (SR–Phlx–2010–170).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64583; File No. SR–BX–2011–031]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. To Amend the Fee Schedule of BOX

June 2, 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 31, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX").[5] While changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2011. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 proposes an amendment to the BOX Fee Schedule to increase the number of contracts per month of Eligible Orders that BOX will route to Away Exchanges before assessing a $0.50 per contract fee. BOX currently exempts outbound Eligible Orders routed to Away Exchanges, up to a maximum of 4,000 contracts per month, from the fees and credits of Section 7 of the BOX Fee Schedule, as these transactions are deemed to neither 'add' nor 'take' liquidity from the BOX Book.[6] Additionally, Section 8 of the BOX Fee Schedule currently imposes a fee of $0.50 per contract for all Eligible Orders routed to Away Exchanges in excess of 4,000 contracts per month for an individual BOX Options Participant.[7] The Exchange proposes to raise this maximum for the exemption in Section 7 and the fee assessment in Section 8 to 10,000 contracts per month, per Options Participant.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities.

The Exchange believes that it is equitable to permit BOX Participants to have orders routed to away exchanges without being assessed a fee, up to a maximum of 10,000 contracts per month. Each BOX Participant will then be assessed a $0.50 per contract fee for orders routed to away exchanges beyond 10,000 contracts per month. The Exchange believes that increasing this maximum will attract additional order flow to BOX to the benefit of all market participants. The Exchange believes that it is an equitable allocation of the fees because the order routing fee structure applies to all BOX Participants.

Further, the Exchange believes the proposed change and its resulting order routing fees are fair and reasonable and must be competitive with similar fees in place on other exchanges. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of eight other competing venues if they deem fee levels at a particular venue to be excessive. The change to allow BOX Participants to have more orders routed away at no cost is intended to attract order flow to BOX and provide BOX Participants additional flexibility in their execution decisions. The Exchange believes all market participants can benefit from greater liquidity on BOX and that it is appropriate to provide a fee structure intended to attract additional order flow. In particular, the proposed change will allow BOX to remain competitive with other exchanges, allow BOX to assess the appropriate fees with respect to orders routed to away exchanges, and to apply such fees in a manner which is equitable among all BOX Participants. The Exchange believes that this competitive marketplace impacts the fees present on BOX today and influences this proposal.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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 [10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee, or other charge applicable only to a member.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The BOX Fee Schedule can be found on the BOX Web site at *http://bostonoptions.com/pdf/BOX_Fee _Schedule.pdf.*

[6] *See* Securities Exchange Act Release No. 60504 (August 14, 2009), 74 FR 42724 (August 24, 2009) (SR–BX–2009–047).

[7] *See* Securities Exchange Act Release No. 60610 (September 1, 2009), 74 FR 46285 (September 8, 2009) (SR–BX–2009–058). The proposed change will have no effect on the billing of orders of non-BOX Options Participants.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–031. 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, NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–031 and should be submitted on or before June 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13994 Filed 6–6–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64580; File No. SR–Phlx–2011–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Customer Complex Orders

June 1, 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 24, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Complex Order[3] Fees in Section I of its Fee Schedule entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" and Section II entitled "Equity Options Fees."

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, 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 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 amend certain Complex Order Fees in Section I, Part C of the Exchange's Fee Schedule[4] as well as in Section II. The Exchange proposes the fee changes to create additional incentives for market participants to execute Customer Complex Orders on the Exchange.

The Exchange proposes to amend Section I, Part C which currently provides, "[a] Customer Complex Order will receive a Rebate for Adding Liquidity (as set forth in Part B) in an electronic auction and during the Exchange's opening process, except when such Customer order is contra to another Customer order." The Exchange is proposing to amend this provision as it relates to electronic auctions, specifically a Complex Order Live Auction ("COLA").[5] The Exchange is not amending the Rebate for Adding Liquidity as it applies to all other electronic auctions, including the Exchange's opening process (collectively "Other Auctions").

First, the Exchange would offer a Rebate for Adding Liquidity for a Customer Complex Order in a COLA, regardless of the contra-party. The contra-party restriction is being

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] Section I applies to certain symbols defined in Section I as "Select Symbols."

[5] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. *See* Exchange Rule 1080.

removed except with regard to Other Auctions,[6] including the opening process. Specifically, the Exchange is proposing to pay a Rebate for Adding Liquidity on Customer Complex Orders in a COLA, notwithstanding whether the Customer order is contra to another Customer order. The Exchange would continue to pay a Rebate for Adding Liquidity on Customer Complex Orders during Other Auctions, including the Exchange's opening process,[7] in certain circumstances.

The Exchange is not amending the Rebate for Adding Liquidity as it applies to Other Auctions, including the Exchange's opening process. For Other Auctions, the Exchange would continue to pay a Rebate for Adding Liquidity (as set forth in Part B) when a Customer Complex Order is executed against a non-Customer (Specialist,[8] Registered Options Trader,[9] SQT,[10] RSQT,[11] Professional,[12] Firm or Broker-Dealer) contra-side Complex Order, or a non-Customer individual order or quote. In other words, for Other Auctions, the Exchange would continue to not pay a Rebate for Adding Liquidity when such Customer Complex Order is contra to another Customer order.

Additionally, the Exchange is proposing to amend Section II of the Fee Schedule which currently states, "[a] rebate of $0.05 per contract will be paid for Customer complex orders that are electronically-delivered and executed against a non-Customer (Specialist, ROT, SQT, RSQT, Professional, Firm or Broker-Dealer) contra-side complex order, or a non-Customer individual order or quote." The Exchange is proposing to pay a $0.05 per contract rebate for Customer Complex Orders that are electronically delivered regardless of the contra-party ("Nickel Rebate"). The contra-party restriction is being removed. The Exchange would continue to pay a rebate on Customer Complex Orders notwithstanding whether the Customer order is executed against a non-Customer contra-side Complex Order or a non-Customer individual order or quote. Section II applies to options overlying equities, exchange-traded note ("ETN") [13] options, exchange-traded fund ("ETF") options,[14] indexes and HOLDRS,[15] which are Multiply-Listed.[16]

The Exchange is proposing to make a grammatical change in Section II to capitalize the words "complex order." The Exchange is also proposing to amend the definition of electronic auctions in the Fee Schedule to reference Rule 1082 for additional clarity.

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.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(4) of the Act [18] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that its proposal should continue to attract Customer order flow to the Exchange for the benefit of all market participants [sic].

The Exchange believes that its proposal is reasonable because the Exchange is continuing to pay the same Rebate for Adding Liquidity in a COLA electronic auction. The Exchange is seeking to increase the incentives for member organizations to send Customer Complex Order flow to the Exchange for execution by expanding the opportunity to earn a rebate. The Exchange believes that offering the Nickel Rebate on all Customer Complex Orders, executed in a non-Select Symbol, and electronically-delivered, regardless of the contra-party, is reasonable because the Nickel Rebate should incentivize additional Customer Complex Orders to be sent to the Exchange for execution.

The Exchange believes that the proposal is equitable because the Exchange is seeking to expand the opportunity to earn a Rebate for Adding Liquidity during a COLA, which the Exchange believes acts as an incentive to increase Customer Complex Orders to be delivered to the Exchange for execution, which in turn benefits all market participants. The Exchange believes the same rationale applies to the Nickel Rebate. As stated above, the Exchange believes market participants benefit from improved liquidity and trading opportunities.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which knowledgeable and sophisticated market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or economically unfavorable. The Exchange believes that the proposed modifications to the rebates paid for Customer Complex Orders must be competitive with rebates available on other options exchanges. The Exchange strongly believes that this competitive options marketplace impacts and influences the fees and rebates present on the Exchange today and affects the proposals set forth above.

[6] For purposes of this filing, Other Auctions include Quote and Market Exhaust auctions. Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or "ISO." *See* Exchange Rule 1082. COLA auctions are discussed above and not included in the Other Auctions reference.

[7] *See* Exchange Rule 1017.

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[10] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[11] An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[12] The Exchange defines a "professional" as any person or entity that (i) Is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

[13] ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

[14] An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

[15] HOLDRS are Holding Company Depository Receipts.

[16] A Multiply Listed security means an option that is listed on more than one exchange.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

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.[19] 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–2011–73 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–2011–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–2011–73 and should be submitted on or before June 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13940 Filed 6–6–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64579; File No. SR–NASDAQ–2011–071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Correction of an Inadvertent Error in NASDAQ Rule 7019(d)

June 1, 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 20, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to make a correction to the definition of "Direct Access" in NASDAQ Rule 7019(d). NASDAQ proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on NASDAQ Web site *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to make a correction to NASDAQ Rule 7019(d) of its Market Data Distributor Fees rule to correct an inadvertent error in the definition of "Direct Access" contained in a recent filing ("previous filing").[3] The previous filing intended to amend the fee schedule to correct an anomaly that effectively exempted certain customers residing within NASDAQ's co-location facility from paying a monthly fee for direct access to NASDAQ data, while customers that received data from an extranet and resided outside the co-location facility were assessed the fee. The previous filing also deleted outdated verbiage in the fee schedule in order to eliminate confusion regarding application of the fees. However, the rule language contained an inadvertent error that effectively still exempts certain co-located customers receiving NASDAQ data feeds from paying a direct access fee.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63441 (December 6, 2010), 75 FR 77022, (December 10, 2010) (SR–NASDAQ–2010–152).

The definition should be corrected to make clear that the definition of "Direct Access" is also applicable to a telecommunications interface with NASDAQ for receiving NASDAQ data feeds (and not NASDAQ data) within the NASDAQ co-location facility as well. NASDAQ is making this change due to an inadvertent clerical error in the previous filing and is making no other changes to NASDAQ Rule 7019.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is to correct an inadvertent error in the definition of "Direct Access" in NASDAQ Rule 7019(d) of its Market Data Distributor Fees rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] NASDAQ has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, NASDAQ believes that its proposal should become immediately effective.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–071. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–071 and should be submitted on or before June 28, 2011.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13949 Filed 6–6–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

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 9, 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 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 Walter, 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 9, 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: June 2, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–14034 Filed 6–3–11; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7491]

Waiver of Restriction on Assistance to the Royal Government of Cambodia

Pursuant to Section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117), as carried forward by the Full-Year Continuing Appropriations Act 2011 ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7086(c)(1) of the Act with respect to the Royal Government of Cambodia and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: May 26, 2011.

Thomas Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–14000 Filed 6–6–11; 8:45 am]

BILLING CODE 4710–30–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of approved projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1, 2011, through April 30, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

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.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Hydro Recovery, LP, Treatment Plant For High TDS Fluids, ABR–201103052, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.200 mgd; Approval Date: March 31, 2011.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. EOG Resources, Inc., Pad ID: COP Pad N, ABR–201103001, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 4, 2011.
2. Penn Virginia Oil & Gas Corporation, Pad ID: Hurler Pad, ABR–201103002, Harrison Township, Potter County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 7, 2011.
3. Talisman Energy USA Inc., Pad ID: 02 128 Brier Mountain Sportsmen, ABR–201103003, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: March 9, 2011.
4. Talisman Energy USA Inc., Pad ID: 05 102 Wheeler E, ABR–201103004, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: March 9, 2011.
5. Talisman Energy USA Inc., Pad ID: 03 088 Andrews A, ABR–201103005, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: March 11, 2011.
6. Southwestern Energy Production Company, Pad ID: Mastri Pad, ABR–201103006, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: March 11, 2011.
7. Southwestern Energy Production Company, Pad ID: Ransom Pad, ABR–201103007, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: March 11, 2011.
8. Southwestern Energy Production Company, Pad ID: Valentine.A Pad, ABR–201103008, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: March 11, 2011.
9. Cabot Oil & Gas Corporation, Pad ID: HawleyJ P1, ABR–201103009, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: March 11, 2011.
10. Aruba Petroleum, Inc., Pad ID: Lundy Well Pad, ABR–201103010, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.600 mgd; Approval Date: March 11, 2011.
11. Chesapeake Appalachia, LLC, Pad ID: DPH, ABR–201103011, Windham Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 14, 2011.
12. Chesapeake Appalachia, LLC, Pad ID: Dziuba, ABR–201103012, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 14, 2011.
13. Chesapeake Appalachia, LLC, Pad ID: Acton, ABR–201103013, Rome Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 16, 2011.
14. Chief Oil & Gas LLC, Pad ID: W & L Wilson Drilling Pad #1, ABR–201103014, Lemon Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: March 16, 2011.
15. Chief Oil & Gas LLC, Pad ID: PMG Annie Drilling Pad #1, ABR–201103015, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: March 17, 2011.
16. Chief Oil & Gas LLC, Pad ID: R & A Harris Drilling Pad #1, ABR–201103016, Tunkhannock Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: March 17, 2011.
17. SWEPI LP, Pad ID: M L Mitchell Trust 554, ABR–201103017, Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 17, 2011.
18. EXCO Resources (PA), LLC, Pad ID: Arthur Pad, ABR–201103018, Franklin Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: March 17, 2011.
19. Chesapeake Appalachia, LLC, Pad ID: Burke, ABR–201103019, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 17, 2011.
20. Cabot Oil & Gas Corporation, Pad ID: ZickJ P1, ABR–201103020, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: March 17, 2011.
21. EOG Resources, Inc., Pad ID: SGL 90D Pad, ABR–201103021, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.
22. Chesapeake Appalachia, LLC, Pad ID: Jones Pad, ABR–201103022, Standing Stone Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 22, 2011.
23. EOG Resources, Inc., Pad ID: PPHC Pad B, ABR–201103023, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.
24. EOG Resources, Inc., Pad ID: PHC Pad Z, ABR–201103024, Lawrence

Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.

25. EOG Resources, Inc., Pad ID: PHC Pad DD, ABR–201103025, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.

26. Carrizo Marcellus, LLC, Pad ID: Kile, ABR–201103026, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: March 22, 2011.

27. EOG Resources, Inc., Pad ID: PHC Pad CC, ABR–201103027, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.

28. EOG Resources, Inc., Pad ID: PHC Pad BB, ABR–201103028, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.

29. EOG Resources, Inc., Pad ID: COP Pad S, ABR–201103029, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.

30. EOG Resources, Inc., Pad ID: COP Pad O, ABR–201103030, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: March 22, 2011.

31. Range Resources—Appalachia, LLC, Pad ID: Bobst Mountain Hunting Club #18H—#23H Drilling Pad, ABR–201103031, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: March 22, 2011.

32. XTO Energy Incorporated, Pad ID: Litwhiler Unit A, ABR–201103032, Pine Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 22, 2011.

33. XTO Energy Incorporated, Pad ID: Renn Unit A, ABR–201103033, Jordan Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 22, 2011.

34. XTO Energy Incorporated, Pad ID: Raymond Unit B, ABR–201103034, Pine Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 22, 2011.

35. Carrizo Marcellus, LLC, Pad ID: Mazzara, ABR–201103035, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: March 22, 2011.

36. Anadarko E&P Company LP, Pad ID: Eugene P Nelson Pad A, ABR–201103036, Cascade Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 23, 2011.

37. SWEPI LP, Pad ID: Butler 853, ABR–201103037, Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 23, 2011.

38. Anadarko E&P Company LP, Pad ID: Cynthia M Knispel Pad A, ABR–201103038, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 24, 2011.

39. EXCO Resources (PA), LLC, Pad ID: Cadwalader Pad, ABR–201103039, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: March 24, 2011.

40. Chief Oil & Gas LLC, Pad ID: Kerrick Drilling Pad #1, ABR–201103040, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: March 24, 2011.

41. Chesapeake Appalachia, LLC, Pad ID: Sarah, ABR–201103041, Athens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 25, 2011.

42. Seneca Resources Corporation, Pad ID: DCNR 007 PAD C, ABR–201103042, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 25, 2011.

43. Range Resources—Appalachia, LLC, Pad ID: Gulf USA #63H Drilling Pad, ABR–201103043, Snow Shoe Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: March 25, 2011.

44. Chesapeake Appalachia, LLC, Pad ID: Barclay, ABR–201103044, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 28, 2011.

45. SWEPI LP, Pad ID: Weiner 882, ABR–201103045, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 25, 2011.

46. SWEPI LP, Pad ID: Salevsky 335, ABR–201103046, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 25, 2011.

47. Seneca Resources Corporation, Pad ID: DCNR 595 PAD C, ABR–201103047, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: March 28, 2011.

48. Chief Oil & Gas LLC, Pad ID: R & L Wilson Drilling Pad #1, ABR–201103048, Eaton Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: March 28, 2011.

49. Carrizo Marcellus, LLC, Pad ID: Baker West (Brothers), ABR–201103049, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: March 28, 2011.

50. Chesapeake Appalachia, LLC, Pad ID: King, ABR–201103050, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 28, 2011.

51. Chesapeake Appalachia, LLC, Pad ID: Hi-Lev, ABR–201103051, Troy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: March 28, 2011.

52. Anadarko E&P Company LP, Pad ID: COP Tr 728 D, ABR–201104001, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: April 4, 2011.

53. Chesapeake Appalachia, LLC, Pad ID: Sensinger, ABR–201104002, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 4, 2011.

54. Ultra Resources, Inc., Pad ID: Geiser 907, ABR–201104003, Abbott Township, Potter County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: April 4, 2011.

55. Anadarko E&P Company LP, Pad ID: COP Tr 728 C, ABR–201104004, Watson Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: April 5, 2011.

56. Range Resources—Appalachia, LLC, Pad ID: Carmen III Unit #1H Drilling Pad, ABR–201104005, Rush Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: April 5, 2011.

57. Chief Oil & Gas LLC, Pad ID: McVicker Drilling Pad #1, ABR–201104006, West St. Clair Township, Bedford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: April 5, 2011.

58. Carrizo Marcellus, LLC, Pad ID: Armbruster, ABR–201101007, Jessup Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: April 6, 2011.

59. Talisman Energy USA Inc. Pad ID: 05 011 Alderson V, ABR–201104008, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: April 8, 2011.

60. Chesapeake Appalachia, LLC, Pad ID: Beaver Dam, ABR–201104009, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 8, 2011.

61. Chesapeake Appalachia, LLC, Pad ID: WRW, ABR–201104010, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 8, 2011.

62. Range Resources—Appalachia, LLC, Pad ID: Null, Eugene Unit #2H—#7H Drilling Pad, ABR–201104011, Lewis Township, Lycoming County, Pa.;

Consumptive Use of up to 5.000 mgd; Approval Date: April 8, 2011.

63. Range Resources—Appalachia, LLC, Pad ID: Ritzenthaler Living Trust Unit #1H—#4H Drilling Pad, ABR–201104012, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: April 8, 2011.

64. Range Resources—Appalachia, LLC, Pad ID: Bidlespacher Unit #1H—#4H Drilling Pad, ABR–201104013, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: April 8, 2011.

65. Range Resources—Appalachia, LLC, Pad ID: Shipman, James #1H & #2H Drilling Pad, ABR–201104014, Lewis Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: April 8, 2011.

66. Chief Oil & Gas LLC, Pad ID: Noble Drilling Pad #1, ABR–201104015, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: April 12, 2011.

67. Range Resources—Appalachia, LLC, Pad ID: Shipman-Goodwill Unit #1H—#4H Drilling Pad, ABR–201104016, Lewis Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: April 13, 2011.

68. Southwestern Energy Production Company, Pad ID: Price Pad, ABR–201104017, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: April 13, 2011.

69. Cabot Oil & Gas Corporation, Pad ID: Lyman J P1, ABR–201104018, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: April 15, 2011.

70. Southwestern Energy Production Company, Pad ID: Valentine. F Pad, ABR–201104019, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: April 15, 2011.

71. Chesapeake Appalachia, LLC, Pad ID: Stempel, ABR–201104020, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 20, 2011.

72. Chesapeake Appalachia, LLC, Pad ID: Hulslander, ABR–201104021, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 20, 2011.

73. Seneca Resources Corporation, Pad ID: DCNR 007 Pad L, ABR–201104022, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: April 21, 2011.

74. XTO Energy Incorporated, Pad ID: PA TRACT 8524H, ABR–201104023, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: April 22, 2011.

75. Chief Oil & Gas LLC, Pad ID: Taylor Drilling Pad #1, ABR–201104024, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: April 25, 2011.

76. Chief Oil & Gas LLC, Pad ID: Polovitch West Drilling Pad #1, ABR–201104025, Nicholson Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: April 25, 2011.

77. Penn Virginia Oil & Gas Corporation, Pad ID: Kibbe Pad, ABR–201104026, Harrison Township, Potter County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: April 25, 2011.

78. Chesapeake Appalachia, LLC, Pad ID: Moody, ABR–201104027, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 25, 2011.

79. Chesapeake Appalachia, LLC, Pad ID: Crain, ABR–201104028, Rome Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 26, 2011.

80. Chesapeake Appalachia, LLC, Pad ID: Kingsley, ABR–201104029, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 26, 2011.

81. Chesapeake Appalachia, LLC, Pad ID: MPC New, ABR–201104030, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: April 26, 2011

82. SWEPI LP, Pad ID: Swan 1122, ABR–201104031, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: April 28, 2011.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: May 23, 2011.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2011–14026 Filed 6–6–11; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: FAA Entry Point Filing Form—International Registry

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2011, vol. 76, no. 47, pages 13263–13264. The respondents supply information through the AC 8050–135 to the FAA Civil Aviation Registry's Aircraft Registration Branch in order to obtain an authorization code for access to the International Registry.

DATES: Written comments should be submitted by July 7, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0697.

Title: FAA Entry Point Filing Form—International Registry.

Form Numbers: AC Form 8050–135.

Type of Review: Renewal of an information collection.

Background: The information collected is necessary to obtain an authorization code for transmission of information to the International Registry. To transmit certain types of interests or prospective interests to the International Registry, interested parties must file a completed FAA Entry Point Filing Form—International Registry, AC Form 8050–135, with the FAA Civil Aviation Registry. Upon receipt of the completed form, the FAA Civil Aviation Registry will issue the unique authorization code.

Respondents: Approximately 12,750 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 6,375 hours.

ADDRESSES: Interested persons are invited to submit written comments on

the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 25, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–13946 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities, Requests for Comments; Clearance of Renewed Approval of Information Collection; Implementation to the Equal Access to Justice Act

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2011, vol. 76, no. 47, page 13265. The information is needed to determine an applicant's eligibility for an award of attorney's fees and other expenses under the Equal Access to Justice Act.

DATES: Written comments should be submitted by July 7, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by *e-mail* at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0539.

Title: Implementation to the Equal Access to Justice Act.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing parties in administrative proceedings before government agencies. Certain information must be obtained from the applicant in order to determine such applicant's eligibility for the EAJA award.

Respondents: Approximately 17 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 680 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 25, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–13947 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighty-Sixth Meeting: RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held June 13–17, 2011, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2), notice is hereby given for a Special Committee 159: Global Positioning System (GPS) meeting. The agenda will include:

Specific Working Group Sessions

Monday, June 13, 2011

- All Day, Working Group 2C, GPS/Inertial, Colson Board Room.

Tuesday, June 14, 2011

- All Day, Working Group 2, GPS/WAAS, Colson Board Room.

Wednesday, June 15, 2011

- All Day, Working Group 2, GPS/WAAS, Colson Board Room.

Thursday, June 16, 2011

- All Day, Working Group 4—Precision Landing Guidance (GPS/LAAS), MacIntosh—NBAA Room and Hilton—ATA Room:
  - 9 a.m.–12 p.m.—Working Group 6, Interference (GPS/Interface), Colson Board Room.
  - 12 p.m.–4:30 p.m.—Working Group

7, Antenna (GPS Antenna), Colson Board Room.

Plenary Session—See Agenda Below

Friday, June 17, 2011

- Chairman's Introductory Remarks.
- Approval of Summary of the Eighty-Fourth and Eighty-Fifth Meetings held February 11, 2011 and May 26, 2011, RTCA Paper No. 082–11/SC159–991 and RTCA Paper No. 099–11/SC159–995, respectively.
- Review Working Group (WG) Progress and Identify Issues for Resolution.
  - GPS/3rd Civil Frequency (WG–1).
  - GPS/WAAS (WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/Inertial (WG–2C).
  - GPS/Precision Landing Guidance (WG–4).
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - GPS/Antennas (WG–7).
- Review of EUROCAE Activities.
- ADS–B GAP Analysis Ad Hoc—Report.
- Assignment/Review of Future Work.
- Other Business.
- Date and Place of Next Meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 26, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–13945 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0122, Notice No. 11–4]

Safety Advisory; Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: This notice advises the public that PHMSA has recently confirmed an undetermined number of certain (aluminum) cylinders were improperly marked and represented as DOT specification 3AL cylinders. The cylinders were neither marked nor certified by an authorized independent inspection agency (IIA) with its official mark and date, in accordance with the applicable regulatory requirements. Therefore, the cylinders are unauthorized for hazardous materials service. Prior to filling these cylinders, a person must verify that the IIA's official mark is stamped between the month and year manufactured. The evidence suggests that if the cylinder is marked with a period (.) rather than the official IIA mark, the cylinder did not undergo the complete series of safety tests and inspections required by the Hazardous Materials Regulations (HMR) and may not possess the structural integrity to safely contain its contents under pressure during normal transportation and use. Extensive property damage, serious personal injury, or death could result from a rupture of the cylinder. Individuals who identify a cylinder marked with only a period (.) between the month and year are advised to remove these cylinders from service and contact PHMSA directly at the below address for further instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Yuying Chen, U.S. Agent for Shanghai Qingpu Fire Fighting Equipment Company, Ltd., 1005 Mirror Street, Pittsburgh, PA 15217, Telephone (412) 235–7880, *E-mail: yvonnechan2001@yahoo.com.*

SUPPLEMENTARY INFORMATION: An undetermined number of the cylinders (typically used for home kegerators), were manufactured between 2009 through 2011 and improperly marked with the manufacturer's symbol "M0306." The cylinders have been stamped with a period (.) between the month and year of manufacture, *i.e.,* "8.10." PHMSA issued the manufacturing symbol "M0306" to Shanghai Qingpu Fire Fighting Equipment Company, Ltd. (Qingpu), located in Shanghai, China. Arrowhead Industrial Services, Inc. (Arrowhead), as Qingpu's authorized independent inspection agency, would have marked the cylinders that passed inspection with its official mark (the letter "A" inside of an arrowhead) between the month and year of manufacture.

Prior to filling these cylinders, a person must verify that Arrowhead's official mark is stamped between the month and year manufactured. Arrowhead does not use a period (.) between the month and year of manufacturing as part of its official mark.

If the cylinder is identified as marked with a period (.) between the month and year, in lieu of the authorized Arrowhead mark, the person in possession of the cylinder is advised to remove that cylinder from service and contact Qingpu's U.S. Agent at the address in this notice.

Issued in Washington, DC, on June 1, 2011.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–13952 Filed 6–6–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activity; Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under part 35a and of Certain Regulations Under Income Tax Treaties.

OMB Number: 1545–1484.

Regulation Project Number: REG–242282–97 (TD 8881-final).

Abstract: This regulation prescribes collections of information for foreign persons that received payments subject to withholding under sections 1441, 1442, 1443, or 6114 of the Internal Revenue Code. This information is used to claim foreign person status and, in appropriate cases, to claim residence in a country with which the United States has an income tax treaty in effect, so that withholding at a reduced rate of tax may be obtained at source. The regulation also prescribes collections of information for withholding agents. This information is used by withholding agents to report to the IRS income paid to a foreign person that is subject to withholding under Code sections 1441, 1442, and 1443. The regulation also requires that a foreign taxpayer claiming a reduced amount of withholding tax under the provisions of an income tax treaty must disclose its reliance upon a treaty provision by filing Form 8833 with its U.S. income tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

The burden for the reporting requirements is reflected in the burden of Forms W–8BEN, W08ECI, W–8EXP, W–8IMY, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–13858 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice and Request for Comments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to Application Requirements, Retroactive Reinstatement and Reasonable Cause under Section 6033(j).

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application Requirements, Retroactive Reinstatement and Reasonable Cause under Section 6033(j).

OMB Number: 1545–2206.

Notice Number: Notice 2011–44.

Abstract: This notice provides guidance with respect to applying for reinstatement and requesting retroactive reinstatement and establishing reasonable cause under section 6033(j)(2) and (3) of the Internal Revenue Code (the Code) for an organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) of the Code. The Treasury Department (Treasury) and the Internal Revenue Service (IRS) intend to issue regulations under section 6033(j) that will prescribe rules, including rules relating to the application for reinstatement of tax-exempt status under section 6033(j)(2) and the request for retroactive reinstatement under section 6033(j)(3).

Simultaneously, and in conjunction with the publication of Notice 2011–44, Treasury and the Internal Revenue Service (IRS) will publish Notice 2011–43, Transitional Relief under Section 6033(j) for Small Organizations. This relief will apply to small organizations that have lost their tax-exempt status because they failed to file an annual electronic notice for taxable years beginning in 2007, 2008 and 2009. The IRS will treat a small organization that qualifies for the transitional relief as having established reasonable cause for its filing failures and will reinstate the organization's tax-exempt status retroactive to the date it was revoked. In order to qualify for the transitional relief, a small organization's application for reinstatement of its tax-exempt status must be postmarked on or before December 31, 2012.

Current Actions: There are no changes being made to the burden previously requested, at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 2,917.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,917.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–13929 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning split-dollar life insurance arrangements.

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Evelyn J. Mack, (202) 622–7381, Internal Revenue Service, room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Split-Dollar Life Insurance Arrangements.

OMB Number: 1545–1792.

Regulation Project Number: REG–164754–01 (Final).

Abstract: The regulations relate to the income, employment, and gift taxation of split-dollar life insurance arrangements. The final regulations provide needed guidance to persons who enter into split-dollar life insurance arrangements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 115,000.

Estimated Time per Respondent: 17 minutes.

Estimated Total Annual Burden Hours: 32,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–13930 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720X, Amended Quarterly Federal Excise Tax Return.

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Amended Quarterly Federal Excise Tax Return.

OMB Number: 1545–1759.

Form Number: 720X.

Abstract: Form 720X is used to make adjustments to correct errors on form 720 filed for previous quarters. It can be filed by itself or it can be attached to any subsequent Form 720. Code section 6416(d) allows taxpayers to take a credit on a subsequent return rather than filing a refund claim. The creation of Form 720X is the result of a project to provide a uniform standard for trust fund accounting.

Current Actions: There are no changes being made to Form 720X at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 22,000.

Estimated Time per Response: 6 hrs, 56 minutes.

Estimated Total Annual Burden Hours: 152,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–13931 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activity; Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefits Plan.

OMB Number: 1545–1643.

Regulation Project Number: REG–209484–87 (TD 8814-final).

Abstract: This document contains final regulations under section 3121(v)(2) of the Internal Revenue Code (Code) that provide guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 3121(v)(2), relating to treatment of certain nonqualified deferred compensation, was added to the Code by section 324 of the Social Security Amendments of 1983. These regulations provide guidance to employers who maintain nonqualified deferred compensation plans and to participants in those plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 24, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–13861 Filed 6–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2011 American Eagle Silver Proof Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2011 American Eagle Silver Proof Coin. The coin will be offered for sale at a price of $59.95.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: June 1, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–13954 Filed 6–6–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Agency Information Collection (Statement of Marital Relationship) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0114" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0114."

SUPPLEMENTARY INFORMATION:

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4170 is completed by individuals claiming to be common law widows/widowers of deceased veterans and by veterans and their claimed common law spouses to establish marital status. VA uses the information collected to determine whether a common law marriage was valid under the law of the place where the parties resided at the time of the marriage or under the law of the place where the parties resided when the right to benefits accrued.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 25, 2011, at pages 16858–16859.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,708 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,500.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13956 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0668]

Agency Information Collection (Supplemental Income Questionnaire (For Philippine Claims Only)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0668" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0668."

SUPPLEMENTARY INFORMATION:

Title: Supplemental Income Questionnaire (For Philippine Claims Only), VA Form 21–0784.

OMB Control Number: 2900–0668.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants residing in the Philippines complete VA Form 21–0784 to report their countable family income and net worth. VA uses the information to determine the claimant's entitlement to pension benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 25, 2011, at page 16858.

Affected Public: Individuals or households.

Estimated Annual Burden: 30 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 120.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13957 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0458]

Agency Information Collection (Certification of School Attendance or Termination) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0458" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0458."

SUPPLEMENTARY INFORMATION:

Title: Certification of School Attendance or Termination, VA Forms 21–8960 and 21–8960–1.

OMB Control Number: 2900–0458.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–8960 and VA Form 21–8960–1 to certify that a child between the ages of 18 and 23 years old is attending school. VA uses the information collected to determine the child's continued entitlement to benefits. Benefits are discontinued if the child marries, or is no longer attending school.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at pages 15050–15051.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 70,000.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13958 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0510]

Agency Information Collection (Application for Exclusion of Children's Income) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0510" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0510."

SUPPLEMENTARY INFORMATION: *Title:* Application for Exclusion of Children's Income, VA Form 21–0571.

OMB Control Number: 2900–0510.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–0571 is used to determine whether children's income can be excluded from consideration in determining a parent's eligibility for non-service connected pension. A veteran's or surviving spouse's rate of improved pension is determined by family income. However, children's income may be excluded if it is unavailable or if including that income would cause a hardship.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15052.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,025 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,700.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13959 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0601]

Agency Information Collection (Requirements for Interest Rate Reduction Refinancing Loans) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0601" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0601."

SUPPLEMENTARY INFORMATION:

Title: Requirements for Interest Rate Reduction Refinancing Loans.

OMB Control Number: 2900–0601.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans may refinance an outstanding VA guaranteed, insured, or direct loan with a new loan at a lower interest rate provided that the veteran still owns the property used as security for the loan. The new loan will be guaranteed only if VA approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, and has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standard provisions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15055.

Affected Public: Business or other for profit.

Estimated Annual Burden: 25 hours.

Estimated Annual Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13960 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0666]

Agency Information Collection (Information Regarding Apportionment of Beneficiary's Award) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0666" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0666."

SUPPLEMENTARY INFORMATION:

Title: Information Regarding Apportionment of Beneficiary's Award, VA Form 21–0788.

OMB Control Number: 2900–0666.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and claimants complete VA Form 21–0788 to report their income information that is necessary for VA to determine whether their compensation and pension benefits can be apportioned to his or her dependents.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15048.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25,000.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13961 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New; DBQs—Group 1]

Agency Information Collection (Disability Benefits Questionnaires—Group 1) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–New (DBQs—Group 1)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–New (DBQs—Group 1)."

SUPPLEMENTARY INFORMATION:

Titles:

a. Hematologic and Lymphatic Conditions, Including Leukemia Disability Benefits Questionnaire, VA Form 21–0960B–2.

b. Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease) Disability Benefits Questionnaire, VA Form 21–0960C–2.

c. Peripheral Nerve Conditions (Not Including Diabetic Sensory-Motor Peripheral Neuropathy) Disability Benefits Questionnaire, VA Form 21–0960C–10.

d. Persian Gulf and Afghanistan Infectious Diseases Disability Benefits Questionnaire, VA Form 21–0960I–1.

e. Tuberculosis Disability Benefits Questionnaire, VA Form 21–0960I–6.

f. Kidney Conditions (Nephrology) Disability Benefits Questionnaire, VA Form 21–0960J–1.

g. Male Reproductive System Conditions Disability Benefits Questionnaire, VA Form 21–0960J–2.

h. Prostate Cancer Disability Benefits Questionnaire, VA Form 21–0960J–3.

i. Neck (Cervical Spine) Disability Benefits Questionnaire, VA Form 21–0960M–13.

j. Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire, VA Form 21–0960M–14.

k. Eating Disorders Disability Benefits Questionnaire, VA Form 21–0960P–1.

l. Mental Disorders (other than PTSD and Eating Disorders) Disability Benefits Questionnaire, VA Form 21–0960P–2.

m. Review Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, VA Form 21–0960P–3.

OMB Control Number: 2900–New (DBQs—Group 1).

Type of Review: New collection.

Abstract: Data collected on VA Form 21–0960 series will be used to obtain information from claimants treating physician that is necessary to adjudicate a claim for disability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2011, at pages 8846–8847.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–0960B–2—2,500.
b. VA Form 21–0960C–2—1,000.
c. VA Form 21–0960C–10—41,250.
d. VA Form 21–0960I–1—12,500.
e. VA Form 21–0960I–6—2,500.
f. VA Form 21–0960J–1—12,500.
g. VA Form 21–0960J–2—6,250.
h. VA Form 21–0960J–3—6,250.
i. VA Form 21–0960M–13—37,500.
j. VA Form 21–0960M–14—37,500.
k. VA Form 21–0960P–1—1,250.
l. VA Form 21–0960P–2—25,000.
m. VA Form 21–0960P–3—27,500.

Estimated Average Burden per Respondent:

a. VA Form 21–0960B–2—15 minutes.
b. VA Form 21–0960C–2—30 minutes.
c. VA Form 21–0960C–10—45 minutes.
d. VA Form 21–0960I–1—15 minutes.
e. VA Form 21–0960I–6—30 minutes.
f. VA Form 21–0960J–1—30 minutes.
g. VA Form 21–0960J–2—15 minutes.
h. VA Form 21–0960J–3—15 minutes.
i. VA Form 21–0960M–13—45 minutes.
j. VA Form 21–0960M–14—45 minutes.
k. VA Form 21–0960P–1—15 minutes.
l. VA Form 21–0960P–2—30 minutes.
m. VA Form 21–0960P–3—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 21–0960B–2—10,000.
b. VA Form 21–0960C–2—2,000.
c. VA Form 21–0960C–10—55,000.
d. VA Form 21–0960I–1—50,000.
e. VA Form 21–0960I–6—5,000.
f. VA Form 21–0960J–1—25,000.
g. VA Form 21–0960J–2—25,000.
h. VA Form 21–0960J–3—25,000.
i. VA Form 21–0960M–13—50,000.
j. VA Form 21–0960M–14—50,000.
k. VA Form 21–0960P–1—5,000.
l. VA Form 21–0960P–2—50,000.
m. VA Form 21–0960P–3—55,000.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13962 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

Agency Information Collection (Information From Remarried Widow/er) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0038" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0038."

SUPPLEMENTARY INFORMATION:

Title: Information from Remarried Widow/er, VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4103 is used to collected data necessary to determine whether a child or children of a deceased veteran who served during a wartime period are eligible to receive death pension benefits when the surviving spouse's entitlement to death pension is permanently discontinued when he or she remarries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at pages 15053–15054.

Affected Public: Individuals or households.

Estimated Annual Burden: 334 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13963 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0394]

Agency Information Collection Activities (Certification of School Attendance—REPS) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the

nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0394" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0394."

SUPPLEMENTARY INFORMATION:

Title: Certification of School Attendance—REPS, VA Form 21–8926.

OMB Control Number: 2900–0394.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8926 is used to verify beneficiaries receiving REPS benefits based on schoolchild status are in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The program pays benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Beneficiaries over age 18 and under age 23 must be enrolled full-time in an approved post-secondary school at the beginning of the school year to continue receiving REPS benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 25, 2011, at page 16859.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13964 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0660]

Agency Information Collection (Request for Contact Information) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0660" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0660."

SUPPLEMENTARY INFORMATION:

Title: Request for Contact Information, VA Form 21–30.

OMB Control Number: 2900–0660.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–30 is used to locate individuals when contact information cannot be obtained by other means or when travel funds may be significantly impacted in cases where an individual resides in a remote location and is not home during the day or when visited. VA uses the data collected determine whether a fiduciary of a beneficiary is properly executing his or her duties.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 25, 2011, at pages 16857–16858.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,000.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13965 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Agency Information Collection (Veteran's Application for Increased Compensation Based on Unemployability) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0404" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0404."

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased disability compensation based on unemployability. Claimants are required to provide current medical, educational, and occupational history in order for VA to determine whether he or she is unable to secure or follow a substantially gainful employment due to service-connected disabilities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at pages 15048–15049.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 24,000.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13966 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0621]

Proposed Information Collection (National Practitioner Data Bank (NPDB) Regulation) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether malpractice payments are related to substandard care, professional incompetence or misconduct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0621" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: National Practitioner Data Bank Regulation (NPDB).

OMB Control Number: OMB Control No. 2900–0621.

Type of Review: Extension of a previously approved collection.

Abstracts: The National Practitioner Data Bank, authorized by the Health Care Quality Improvement Act of 1986 and administered by the Department of Health and Human Service, was established for the purpose of collecting and releasing certain information concerning physicians, dentists, and other licensed health care practitioners. The Act requires VA to obtain information from the Data Bank on health care providers who provide or seek to provide health care services at VA facilities and report information regarding malpractice payments and adverse clinical privileges action to the Data Bank.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,750.

Frequency of Response: On occasion.

Estimated Average Burden per Respondents: 5 hours.

Estimated Annual Responses: 350.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13967 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Agency Information Collection (Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0031" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail

denise.mclamb@va.gov. Please refer to "OMB Control No. 2900–0031."

SUPPLEMENTARY INFORMATION:

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans complete VA Form 26–4555c to apply for specially adapted housing grants. VA will use the data collected to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 25, 2011, at pages 16859–16860.

Affected Public: Individuals or households.

Estimated Annual Burden: 350 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,400.

Dated: June 2, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13968 Filed 6–6–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Roswell Springsnail, Koster's Springsnail, Noel's Amphipod, and Pecos Assiminea; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0014; 92210–1117–0000–B4]

RIN 1018–AW50

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Roswell Springsnail, Koster's Springsnail, Noel's Amphipod, and Pecos Assiminea

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, designate critical habitat for the Pecos assiminea (*Assiminea pecos*), Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), and Noel's amphipod (*Gammarus desperatus*), under the Endangered Species Act of 1973, as amended. In total, we are designating as critical habitat approximately 521.3 acres (211.0 hectares) for the four species of aquatic invertebrates. The critical habitat is located in Chaves County, New Mexico, and Pecos and Reeves Counties, Texas.

DATES: This rule becomes effective on July 7, 2011.

ADDRESSES: This final rule and the associated final economic analysis and final environmental assessment are available on the Internet at *http://www.regulations.gov* or *http://www.fws.gov/southwest/es/NewMexico/*. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd, NE, Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542.

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd, NE, Albuquerque, NM 87113; telephone 505–761–4781; facsimile 505–246–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: It is our intent to discuss in this final rule only those topics directly relevant to the development and designation of critical habitat for the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), Noel's amphipod (*Gammarus desperatus*), and Pecos assiminea (*Assiminea pecos*) (four invertebrates). For more information on the biology and ecology of the four invertebrates, refer to the final listing rule published in the **Federal Register** on August 9, 2005 (70 FR 46304). For information on the four invertebrates' critical habitat, refer to the proposed rule to designate critical habitat for the four invertebrates, published in the **Federal Register** on June 22, 2010 (75 FR 35375), and February 17, 2011 (76 FR 9297).

Previous Federal Actions

On February 12, 2002, we proposed listing the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea as endangered with critical habitat (67 FR 6459) under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Proposed critical habitat for the four species included portions of Bitter Lake National Wildlife Refuge (Refuge) in New Mexico, as well as two sites in Texas for the Pecos assiminea. On May 31, 2002, and again on May 4, 2005, we reopened the comment period on our February 12, 2002, proposed listing of the four invertebrates with critical habitat (67 FR 38059 and 70 FR 23083, respectively).

On August 9, 2005, we listed Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea as endangered under the Act (70 FR 46304). In that rule, we also designated critical habitat for Pecos assiminea at Diamond Y Springs Complex in Pecos County, Texas, and at East Sandia Springs in Reeves County, Texas. We excluded proposed areas on the Refuge from the final critical habitat designation because special management for the four invertebrates was already occurring there. As a result, only the Pecos assiminea had critical habitat designated for two areas in Texas, and no critical habitat was designated for the other three species.

On March 12, 2009, in response to a complaint filed by Forest Guardians (now WildEarth Guardians) challenging the exclusion of the Refuge from the final critical habitat designation for the four invertebrate species, we published an announcement reopening a 60-day comment period on the proposed designation of lands of the Bitter Lake National Wildlife Refuge as critical habitat for the four invertebrates (74 FR 10701).

On June 22, 2010, we published a proposed rule to revise critical habitat for the Pecos assiminea and propose new critical habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod (75 FR 35375). The comment period was open for 60 days and closed on August 23, 2010. Information we received during that comment period led to our consideration of a new area for critical habitat for the Noel's amphipod along the Rio Hondo on the South Tract of the Refuge and, therefore, led to our publication of an additional document on February 17, 2011 (76 FR 9297), to accept public comment on the proposed designation of this additional area.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the four invertebrates during the comment periods held from March 12 to May 11, 2009; June 22 to August 23, 2010; and February 17 to March 21, 2011. We did not receive any requests for a public hearing, and none was held. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, draft economic analysis, and draft environmental assessment during the last two comment periods.

During the comment periods, we received six comment letters directly addressing the proposed critical habitat designation. All substantive information provided during comment periods has either been incorporated directly into this final determination as appropriate or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occur, and conservation biology principles. We received responses from two of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the four invertebrates. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* Both peer reviewers and the State of New Mexico recommended the habitat supporting the Rio Hondo population of Noel's amphipod on the South Tract of the Refuge be included in this critical habitat designation.

Our response: We agree that the Rio Hondo population of Noel's amphipod should be included in this designation of critical habitat, and we published an additional document to request public comments on the proposed designation of the additional area on February 17, 2011 (76 FR 9297). We have included this area in this final critical habitat designation.

(2) *Comment:* One peer reviewer and the State of New Mexico requested we clarify the language discussing the number of locations of Pecos assiminea that occur on the Refuge, which stated disparate numbers of populations.

Our response: We have revised the language accordingly in this final critical habitat designation.

(3) *Comment:* One peer reviewer suggested we designate additional areas of Hunter Marsh on the Refuge that may likely contain additional habitat occupied by the four invertebrates.

Our response: We considered all areas of Hunter Marsh for possible inclusion as critical habitat. In doing so, we relied on species experts and Refuge staff to identify those areas occupied by any of the four invertebrates at the time of listing that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Using mapping techniques and field visits, we designated all areas within this tract on the Refuge that meet the criteria for critical habitat. For areas not occupied by any of the four invertebrates at the time they were listed, we found none that would meet the criteria to be essential for the four invertebrates' conservation, and none of the four invertebrates is likely to become established in other areas.

(4) *Comment:* One peer reviewer and the State of New Mexico noted that the Pecos assiminea proposed critical habitat map does not show any of the property owned by the City of Roswell (City) as being proposed for critical habitat.

Our response: In the proposal, we incorrectly identified the Refuge boundary. The revised map shows the correct boundary, accurately displaying portions of Units 2a and 2b as City property.

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." We received two comment letters from the State of New Mexico. The comments in the first letter are addressed above (see (1), (2), and (4) under *Peer Reviewer Comments*). The second letter specifically addressed our February 17, 2011 (76 FR 9297), proposed rule, stating that the New Mexico Department of Game and Fish (NMDGF) supports the critical habitat designation.

Public Comments

(5) *Comment:* One commenter suggested we include additional areas surrounding depleted springs and ponds as critical habitat.

Our response: Much of the historic habitat for these four invertebrates has been degraded to such a degree that it no longer contains the physical and biological features necessary for conservation of these species. Only areas meeting the criteria for critical habitat for the four invertebrates are designated as critical habitat in this rule, as well as surrounding areas contiguous with occupied habitat that may be inhabited in the future. Because the depleted springs and ponds mentioned by the commenter are dewatered due to groundwater loss in the area, it is not likely they could be rehabilitated in the future to restore the necessary habitat features for the four invertebrates. Therefore, these areas are unlikely to contribute to the recovery of the species, are not considered essential to their conservation, and are not included in this critical habitat designation.

(6) *Comment:* One commenter recommended limiting designation of critical habitat to areas of the Refuge where the four invertebrates can occur.

Our response: Updated geographic information system (GIS) techniques have allowed us to more closely map the wetlands, springs, and seeps on the Refuge in which the four invertebrates can occur; therefore, our designation is refined from the 2002 proposal to designate critical habitat for the four invertebrates (February 12, 2002; 67 FR 6459) and no longer includes uplands or other Refuge lands that do not contain the essential physical and biological features of critical habitat for these four invertebrates.

Summary of Changes From the Proposed Rule

Since the publication of the June 22, 2010, proposed rule to revise critical habitat for the Pecos assiminea and propose new critical habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod (75 FR 35375), we have made the following changes:

(1) Because the Pecos assiminea occupies different habitats than the Roswell springsnail, Koster's springsnail, and Noel's amphipod, we created separate critical habitat units for the Pecos assiminea on the Refuge.

(2) Due to the discovery of a population of Noel's amphipod along the Rio Hondo on the South Tract of the Refuge, we proposed an additional critical habitat area on February 17, 2011 (76 FR 9297). This area is included as critical habitat in this final rule.

(3) Because of the addition of new units for the Pecos assiminea and Noel's amphipod, the unit numbers have changed from those in the proposed rule.

(4) Due to a mapping error, the total amount of critical habitat is 0.5 acres (ac) (0.2 hectares (ha)) more than was proposed. No additional critical habitat has been designated in this rule, as the error was purely mathematical.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance,

propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the U.S. Fish and Wildlife Service (Service), that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that provide for a species' life history processes and are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts, if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for the four invertebrates from studies of these species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on June 22, 2010 (75 FR 35375) and in the information presented below. Additional information can be found in the final listing rule published in the

Federal Register on August 9, 2005 (70 FR 46304). We have determined that the following physical and biological features are required by the four invertebrates.

Space for Individual and Population Growth and for Normal Behavior

Roswell Springsnail, Koster's Springsnail, Noel's Amphipod

The aquatic environment provides foraging and sheltering habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod, as well as habitat structure necessary for reproduction and survival of offspring. These invertebrates are completely aquatic and require perennial, flowing water for all of their life stages. The springsnails can survive in seepage areas, as long as flows are perennial and within the species' physiological tolerance limit; pool-like habitat is less suitable for these species, which prefer flowing water. They inhabit springs and spring-fed wetland systems with variable water temperatures (50–68 degrees Fahrenheit (°F)) (10–20 degrees Celsius (°C)). In general, the springsnails inhabit slow to moderate water velocities over compact substrate (material on the bottom of the stream) ranging from deep organic silts to gypsum sands and gravel (NMDGF 2005, pp. 13, 16). Habitat of Koster's springsnail consists of soft substrates of springs and seeps (Taylor 1987, p. 43). Roswell springsnail, on the other hand, was found to be most abundant on hard, gypsum substrate (NMDGF 2005, p. 16), which may make the species more susceptible to sedimentation. Noel's amphipod is found beneath stones and in aquatic vegetation (Cole 1988, p. 5; Smith 2001, pp. 572–574). The addition of stones, which increased current velocity, appeared to improve habitat for Noel's amphipod along the Unit 6 spring-ditch on the Refuge (Lang 2002, p. 2).

The two springsnails and Noel's amphipod are sensitive to water contamination. Amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are very sensitive to habitat degradation (NMDGF 1999, p. B3; Smith 2001, p. 575; NMDGF 2005, p. 15). Further, Taylor (1985, p. 15) concluded that an unidentified groundwater pollutant was responsible for reduction in abundance of springsnail species in the headspring and outflow of Diamond Y Spring, in Pecos County, Texas.

Pecos Assiminea

The Pecos assiminea requires saturated, moist soil at stream or spring-run margins and is found in wet mud or beneath mats of vegetation, usually within 1 inch (in) (2 to 3 centimeters (cm)) of flowing water. Spring complexes that contain flowing water create saturated soils that provide the specific habitat needed for population growth, sheltering, and normal behavior of the species. Although this snail seldom occurs immersed in water, the species cannot withstand permanent drying of springs or spring complexes. Consequently, wetland plant species are required to provide leaf litter (dead leaf material), shade, and appropriate microhabitat. Plant species such as *Scirpus americanus* (American three-square), *Eleocharis* spp. (spike rush), *Distichlis spicata* (inland saltgrass), and *Juncus* spp. (rushes) provide the appropriate cover and shelter required by Pecos assiminea (NMDGF 2005, p. 13).

Food

Invertebrates in small spring ecosystems depend on food from two sources: that which grows in or on the substrate (aquatic and attached plants and algae) and that which falls or is blown into the system (primarily leaves). Leaves from nonnative plants that fall into the water are often less suitable food sources for invertebrates because of either their resins or their physical structure (Bailey *et al.* 2001, p. 445). Water is also the medium necessary to provide the algae, detritus (dead or partially decayed plant materials or animals), bacteria, and submergent vegetation (vegetation submerged in water) on which the four species depend as a food resource, although submergent vegetation is less important for the Pecos assiminea because it inhabits the wet soils just above the water's edge.

Roswell Springsnail and Koster's Springsnail

The springsnails feed on algae, bacteria, and decaying organic material (NMDGF 2005, p. 14). They will also incidentally ingest small invertebrates while grazing on algae and detritus. Submergent vegetation contributes the necessary nutrients, detritus, and bacteria on which these species forage. Resource abundance and productivity appears to be an important factor in regulating population size (NMDGF 2005, p. 16).

Noel's Amphipod

Amphipods are omnivorous, feeding on algae, submergent vegetation, and decaying organic matter (Holsinger 1976, p. 28; Pennak 1989, p. 476). Noel's amphipod is often found in beds of submergent aquatic plants, indicating that they probably feed on a surface film of algae, diatoms (single-celled algae with high silica content), bacteria, and fungi (Smith 2001, p. 575; NMDGF 2005, p. 14). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991, p. 677). Cannibalism may occur at high densities when food becomes limiting (Smith 2001, p. 575; NMDGF 2005, p. 15).

Pecos Assiminea

The Pecos assiminea has a file-like radula (a ribbon of teeth) situated behind the mouth that it uses to graze or scrape food from the foraging surface. Saturated soils and wetland vegetation adjacent to spring complexes contribute to the necessary components to support the algae, detritus, and bacteria on which this species forages.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Primary Constituent Elements for Roswell Springsnail and Koster's Springsnail

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life history functions of the species, we have determined that the primary constituent element essential to the conservation of Roswell springsnail and Koster's springsnail is springs and spring-fed wetland systems that:

(1) Have permanent, flowing water with no or no more than low levels of pollutants;

(2) Have slow to moderate water velocities;

(3) Have substrates ranging from deep organic silts to limestone cobble and gypsum;

(4) Have stable water levels with natural diurnal (daily) and seasonal variations;

(5) Consist of fresh to moderately saline water;

(6) Vary in temperature between 50–68 °F (10–20 °C) with natural seasonal and diurnal variations slightly above and below that range; and

(7) Provide abundant food, consisting of:

(a) Algae, bacteria, and decaying organic material; and

(b) Submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage.

Primary Constituent Elements for Noel's Amphipod

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life history functions of the species, we have determined that the primary constituent element essential to the conservation of Noel's amphipod is springs and spring-fed wetland systems that:

(1) Have permanent, flowing water with no or no more than low levels of pollutants;

(2) Have slow to moderate water velocities;

(3) Have substrates including limestone cobble and aquatic vegetation;

(4) Have stable water levels with natural diurnal (daily) and seasonal variations;

(5) Consist of fresh to moderately saline water;

(6) Have minimal sedimentation;

(7) Vary in temperature between 50–68 °F (10–20 °C) with natural seasonal and diurnal variations slightly above and below that range; and

(8) Provide abundant food, consisting of:

(a) Submergent vegetation and decaying organic matter;

(b) A surface film of algae, diatoms, bacteria, and fungi; and

(c) Microbial foods, such as algae and bacteria, associated with aquatic plants, algae, bacteria, and decaying organic material.

Primary Constituent Elements for Pecos Assiminea

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life history functions of the species, we have determined that the primary constituent element essential to the conservation of Pecos assiminea is moist or saturated soil at stream or spring run margins:

(1) That consists of wet mud or occurs beneath mats of vegetation;

(2) That is within 1 in (2 to 3 cm) of flowing water;

(3) That has native wetland plant species, such as salt grass or sedges, that provide leaf litter, shade, cover, and appropriate microhabitat;

(4) That contains wetland vegetation adjacent to spring complexes that supports the algae, detritus, and bacteria needed for foraging; and

(5) That has adjacent spring complexes with:

(a) Permanent, flowing, fresh to moderately saline water with no or no more than low levels of pollutants; and

(b) Stable water levels with natural diurnal and seasonal variations.

With this designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the primary constituent elements sufficient to support the life-history processes of the species. All units designated as critical habitat are currently occupied by at least one of the four invertebrates and contain the primary constituent elements sufficient to support the life history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. As stated in the final listing rule (70 FR 46304; August 9, 2005), threats to the four invertebrates include reducing or eliminating water in suitable or occupied habitat through drought or pumping; introducing pollutants to levels unsuitable for the species from urban areas, agriculture, release of chemicals, and oil and gas operations; fires that reduce or eliminate available habitat; and introducing nonnative species into the invertebrates' inhabited spring systems such that suitable habitat is reduced or eliminated. Each of these threats is discussed below.

Water Quantity

These four invertebrate species depend on water for survival. Therefore, the loss or alteration of spring habitat continues to be the main threat to the four invertebrates. The scattered distribution of springs makes them aquatic islands of unique habitat in an arid-land matrix (Myers and Resh 1999, p. 815).

Members of the snail family Hydrobiidae (including Roswell and Koster's springsnails) are susceptible to extirpation or extinction because they often occur in isolated desert springs (Hershler 1989, p. 294; Hershler and Pratt 1990, p. 291; Hershler 1994, p. 1; Lydeard *et al.* 2004, p. 326). There is evidence these habitats have been historically reduced or eliminated by aquifer depletion (Jones and Balleau 1996, p. 4). The lowering of water tables through aquifer withdrawals for irrigation and municipal use has degraded desert spring habitats. At least two historical sites for the invertebrates (South Spring, Lander Spring) are currently dry due to aquifer depletion (Cole 1981, p. 27; Jones and Balleau 1996, p. 5), and Berrendo Spring, historical habitat for the Roswell springsnail, is currently at 12 percent of the original 1880s flow (Jones and Balleau 1996, p. 13). However, during the mid-1970s, when groundwater pumping was at its highest rate and the area was experiencing extreme drought (McCord *et al.* 2005, p. 6), the springs currently inhabited by the species continued to flow. This suggests these springs and seeps may be somewhat resilient to reduced water levels, although climate change may test that resiliency.

Models suggest climate change may cause the southwestern United States to experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 15). There is also high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to climate change (IPCC 2007, p. 16), as a result of less annual mean precipitation and reduced length of snow season and snow depth (Christensen *et al.* 2007, p. 850). These predictions underscore the importance of special management to maintain aquifer levels to ensure survival of the four invertebrates.

The primary threat to Pecos assiminea in Texas is the potential failure of spring flow due to excessive groundwater pumping or drought or both, which would result in total habitat loss for the species. Diamond Y Spring is the last major spring still flowing in Pecos County, Texas (Veni 1991, p. 2). Pumping of the regional aquifer system for agricultural production of crops has resulted in the drying of most other springs in this region (Brune 1981, p. 356). Other springs that have already failed include Comanche Springs, which was once a large spring in Fort Stockton, Texas, about 8 miles (mi) (12.9 kilometers (km)) from Diamond Y Spring. Comanche Springs flowed at more than 142 cubic feet per second (cfs) (4.0 cubic meters per second (cms))

(Scudday 1977, p. 515; Brune 1981, p. 358) and undoubtedly provided habitat for rare species of fish and invertebrates, including springsnails. The spring ceased flowing by 1962 (Brune 1981, p. 358), except for brief periods (Small and Ozuna 1993, p. 26). Leon Springs, located upstream of Diamond Y Spring in the Leon Creek watershed, was measured at 18 cfs (0.5 cms) in the 1930s and was also known to contain rare fish, but ceased flowing in the 1950s following significant irrigation pumping (Brune 1981, p. 359). There have been no continuous records of spring flow discharge at Diamond Y Spring by which to determine trends in spring flow.

East Sandia Spring discharges at an elevation of 3,205 feet (ft) (977 meters (m)) from alluvial sand and gravel (Schuster 1997, pp. 92–93). Brune (1981, pp. 385–386) noted that flows from East Sandia Spring were declining. East Sandia Spring may be very susceptible to over-pumping in the area of the local aquifer that supports the spring. Measured discharges in 1995 and 1996 ranged from 0.45 to 4.07 cfs (0.013 to 0.11 cms) (Schuster 1997, p. 94). The small outflow channel from East Sandia Spring has not been significantly modified, and water flows into an irrigation system approximately 328 to 656 ft (100 to 200 m) after surfacing.

In summary, special management considerations are needed to protect the habitats of the four invertebrates from the loss or alteration of spring habitat as a result of drought or pumping.

Water Contamination

Water contamination, particularly from oil and gas operations, is a significant threat for these four invertebrates. In order to assess the potential for contamination, a study was completed in September 1999 to delineate the area that serves as sources of water for the springs on the Refuge (Balleau *et al.* 1999, pp. 1–42). This study reported that the sources of water that will reach the Refuge's springs include a broad area beginning west of Roswell near Eightmile Draw, extending to the northeast to Salt Creek, and southeast to the Refuge. This area represents possible pathways that contaminants may enter the groundwater that feeds the springs on the Refuge. This broad area sits within a portion of the Roswell Basin and contains a mosaic of Federal, State, and private lands with multiple land uses, including expanding urban development.

There are 378 natural gas and oil wells that are potential sources of groundwater contamination in the 12-township area encompassing the source-water capture zone for the springs where the four invertebrates occur on the Refuge (Go-Tech 2010). Of these, 17 oil and gas leases are currently within the habitat protection zone designated by the Department of the Interior's Bureau of Land Management (BLM) to reduce risk to the endangered Pecos gambusia (*Gambusia nobilis*) from drilling operations. The BLM habitat protection zone will also reduce risk to the four invertebrates from drilling operations because it protects the same source-water capture zone for the four invertebrates. This habitat protection zone encompasses 12,585 ac (5,093 ha) of the Federal mineral estate within the water resource area for the Refuge (U.S. Fish and Wildlife Service (Service) 2005a, pp. 3–8). Twenty natural gas wells currently exist on these leases. The BLM has estimated, according to well spacing requirements established by the New Mexico Oil Conservation Division (Service 2005a, pp. 4–6), a maximum potential development of 66 additional wells within the habitat protection zone. From 2002 to 2004, there were 200 notices of "intentions to drill" (59 on State, 33 on private, and 108 on Federal lands) filed for oil or natural gas in Chaves County (Go-Tech 2010).

There are additional risks of groundwater contamination from accidental release of pollutants on State and private lands. Existing State regulations apply to all State and private lands where oil and gas operations occur and are designed to minimize the risk of spills and leaks. However, there are numerous examples in which oil and gas operations have met these regulatory standards within karst lands in New Mexico and other States, but where these measures failed to protect groundwater resources and prevent aquifer drawdown (Quarles 1983, p. 155; Richard and Boehm 1989, p. 1). Groundwater contamination can be a serious threat because to clean the aquifer would be extremely difficult should it become contaminated by oil, chemicals, or organics, such as nitrates. In most cases, contamination of an underground aquifer by agricultural, industrial, or domestic sources is treated only at the source. When a contamination site is discovered, the source of the contamination is treated, and rarely do remediation efforts pump water from the aquifer and treat it before sending it back. This is largely because these techniques are very costly and difficult to apply (S. McGrath, pers. comm. 2001). Because these invertebrate species are sensitive to contaminants, efforts to clean up pollution after the aquifer has been contaminated may not be sufficient to protect these species and the aquatic habitat on which they depend.

Currently there are two active gas wells on the Middle Tract of the Refuge that are upstream (within the underground watershed) of occupied habitat for the four invertebrates. In 2006, Yates Petroleum applied for two additional gas wells, one of which would have been just upstream of occupied habitat for the four invertebrates. The applications have since been withdrawn due to ecological concerns of the proposal (including possible effects on the four invertebrates and the endangered fish, Pecos gambusia) and other issues, although the potential for oil and gas development remains.

The Diamond Y Springs Complex is within an active oil and gas extraction field. At this time there are still many active wells and pipelines located within 100 meters of the surface waters at the springs. In addition, a natural gas refinery is located within 0.5 mi (0.8 km) upstream of Diamond Y Spring. There are also old brine pits, which can contribute salt and other mineral pollutants to the groundwater, associated with previous drilling within feet of surface waters. In addition, oil and gas pipelines cross the spring outflow channels and marshes where the Pecos assiminea occurs, creating a constant potential for contamination from pollutants from leaks or spills. These activities pose a threat to the habitat of the Pecos assiminea by creating the potential for pollutants to enter underground aquifers that contribute to spring flow or for pollutants to contaminate the surface through spills and leaks of petroleum products.

As an example of the likelihood of a spill occurring, in 1992, approximately 10,600 barrels of crude oil were released from a 6-in (15.2-cm) pipeline that traverses Leon Creek above its confluence with Diamond Y Draw. The oil was from a ruptured pipeline at a point several hundred feet away from the Leon Creek channel. The site itself is about 1 mi (1.6 km) overland from Diamond Y Spring. The distance that surface runoff of oil residues must travel is about 2 mi (3.2 km) down Leon Creek to reach Diamond Y Draw. The pipeline was operated at the time of the spill by the Texas-New Mexico Pipeline Company, but ownership has since been transferred to several other companies. The Texas Railroad Commission has been responsible for overseeing cleanup

of the spill site. Remediation of the site initially involved aboveground land farming of contaminated soil and rock strata to allow microbial degradation. In recent years, remediation efforts have focused on vacuuming oil residues from the surface of groundwater exposed by trenches dug at the spill site. No impacts on the rare fauna of Diamond Y Springs Complex have been observed, but no specific monitoring of the effects of the spill was undertaken (Service 2005a, pp. 4–12).

Water contamination is a significant threat for Noel's amphipod in the small spring vents (where the spring opens to the surface) along the Rio Hondo on the South Tract of the Refuge. One possible source of water contamination is runoff of agricultural fertilizers and pesticides that are applied to the croplands on the South Tract of the Refuge. This tract encompasses approximately 1,400 ac (570 ha) that are closed to public access. About 330 ac (130 ha) are used as agricultural cropland to provide food, habitat, and feeding areas for wintering migratory bird populations (Service 1998, p. 7). Alfalfa, corn, hegari, barley, winter wheat, sorghum, and other small grains are cultivated on this tract (Service 2010, p. 14). Although crop rotation minimizes the need for chemical fertilizers, both fertilizers and pesticides are used on this tract, and these chemicals have the potential to enter the springs inhabited by Noel's amphipod. Chemicals used on the South Tract in the past 10 years include Accent (Nicosulfuron), Banvel (Dicamba), Pounce (Permethrin), Roundup and equivalents (Glyphosate), Pursuit DG (Imazathapyr), Rhonox (2-ethylhexyl ester of 2-methyl-4-chlorophenoxyacetic acid), Steadfast (Nicosulfuron/Rimsulfuron), Malathion 57 (Malathion), and Impact (Topramezone) (Service 2010, pp. 43–44). To protect aquatic life in the Rio Hondo, the Refuge implements chemical-specific buffers within which the chemicals cannot be used. Additionally, restrictions are in place on Refuges prohibiting use of chemicals that dissolve and travel in groundwater. These restrictions and buffers serve to minimize exposure of Noel's amphipod to these chemicals. Nevertheless, there remains a potential for contamination and negative effects to Noel's amphipod and its habitat.

The Refuge is in the process of reviewing the farming program on the South Tract. A draft environmental analysis (Service 2010, pp. 1–55) evaluates the effects of several levels of farming on this tract. The current preferred alternative is to eliminate farming on the South Tract; if the draft environmental analysis is adopted, no future chemical application of fertilizers or pesticides would occur in the vicinity of Noel's amphipod populations, and this source of potential water contamination would be eliminated.

Another potential source of water contamination in Noel's amphipod habitats on the South Tract is from periodic inundation by water from the Rio Hondo. The Rio Hondo is a perennial stream from Roswell to its confluence with the Pecos River, and its watershed extends eastward to the Sacramento Mountains. The majority of the lower Rio Hondo valley is used for extensive agricultural purposes, including ranching, commercial livestock feeding, and crop production, as well as residential land use (USACE 1974, p. 8). Stormwater runoff from areas with these land uses is one way contaminants can be transported into the Rio Hondo and into Noel's amphipod habitats. While we have no specific information on the water quality of the stormwater entering the Rio Hondo, stormwater runoff from other urban areas has been identified as potentially containing materials such as solids, plastics, sediment, nutrients, metals, pathogens, salts, oils, fuels, and various chemicals, including antifreeze, detergents, pesticides, and other pollutants that can be toxic to aquatic life (Burton and Pitt 2002, pp. 6–7; Selbig 2009, p. 1).

Another way the Rio Hondo receives contaminants is by wastewater effluent discharge (USACE 1974, p. 9; Smith 2000, p. 65). At the present time, the average return flow from City of Roswell Wastewater Treatment Facility is approximately 6.2 cfs (0.18 cms). Effluent from the Roswell Wastewater Treatment Facility is largely used for crop irrigation from February through November or is discharged to the North Spring River, which flows 5 mi (8 km) before entering the Rio Hondo (Smith 2000, p. 65; USEPA 2006, p. 2), upstream of the Noel's amphipod population. In 2010, the Roswell Wastewater Treatment Facility was modified to provide a higher level of water purification that should improve the quality of the effluent discharge (USEPA 2007, p. 5; J. Anderson, City of Roswell, pers. comm. December 9, 2010). However, some nutrients, bacteria, metals, pesticides, oxygen-demanding substances, organic chemicals, surfactants (materials that remove surface tension of water, such as soaps and detergents), flame retardants, personal care products, steroids, hormones, and pharmaceuticals are expected to remain in the Rio Hondo (USEPA 2009, pp. 26–39).

Past analysis of water quality in the Rio Hondo has indicated some concerns. For example, sampling in the past yielded that total dissolved solids in Rio Hondo water averaged 935 milligrams per liter (mg/L), sulfates averaged 722 mg/L, and chlorides averaged 40 mg/L (USACE 1974, p. V–4) (both sulfates and chlorides are components of salt). However, more recent sampling by the New Mexico Environment Department (NMED) (2006a, p. 13) found higher total dissolved solids (average 7,321 mg/L), including more chloride (average 2,640 mg/L) and slightly more sulfate (average 776 mg/L) than reported by the U.S. Army Corps of Engineers (USACE 1974, p. V–4). In addition, the NMED (2006b, p. 32) identified water quality parameters of nutrients, bacteria, salinity, and temperature as a concern in the upper Rio Hondo watershed. Potential sources of nutrients or bacteria are municipal wastewater treatment facility effluents, onsite waste treatment systems (septic tanks), residential areas, landscape maintenance, livestock feeding operations, rangeland grazing, atmospheric deposition, stream modification or destabilization, and urban areas and construction sites (NMED 2006b, p. 32).

Riverine conditions in the Rio Hondo are not suitable for Noel's amphipod; the amphipod is found only in the nearby springs. However, Noel's amphipod could be affected by river water entering the spring runs during periods of high flow by either flushing the amphipods downstream or by river water mixing with spring water and introducing contaminants or altered water chemistry to the spring habitats. The Rio Hondo has a base flow between 2 and 6 cfs (0.06 to 0.17 cms) but exceeds 10 cfs (0.03 cms; a flow high enough to inundate the springs) approximately 5 to 10 times per year for short durations (USGS 2010, p. 1). Under base flow conditions, the spring runs that harbor Noel's amphipod are found along the riverbank at elevations higher than the stream, and, therefore, the water from the river does not mix with the spring outflow water. However, when Rio Hondo flows are elevated, these springs become inundated with water from the river, and the amphipods may be exposed to contaminants from the Rio Hondo. The impacts of any such contaminants would be lessened due to the high dilution rate of any treated wastewater discharge during a flood event.

Groundwater that supplies the outflow to the springs where the amphipod occurs is an additional potential source of spring water

contamination. This water is clearly distinct from the water of the nearby Rio Hondo based on very different temperatures and low dissolved oxygen measurements (Lusk 2010, p. 1). Low dissolved oxygen is typical of spring water conditions, as oxygen enters the water mainly through the atmosphere (White *et al.* 1990, p. 584), and spring water temperatures remain much more constant throughout the year due to the insulating effect of soil and rock on groundwater (Constantz 1998, p. 1610). The South Tract of the Refuge lies within the same groundwater source area as the Middle Tract, where the other Noel's amphipod populations are found and is, therefore, subject to the same threat of contamination from oil and gas activities as discussed above.

There has been no research on the specific effects on Noel's amphipod of contaminants such as metals, pesticides, fertilizers, nutrients, or bacteria. However, there is some evidence that freshwater amphipods in the family Gammaridae (in particular, *Gammarus*) may require higher oxygen levels and less polluted water than some other amphipods such as *Crangonyx* (*e.g.,* MacNeil *et al.* 1997, pp. 350, 356; MacNeil *et al.* 2000, p. 2). Gammarid amphipods (such as Noel's amphipod) may be considered an indicator of relatively unpolluted waters (MacNeil *et al.* 1997, p. 356; MacNeil *et al.* 2000, p. 6). Additionally, bacteria in high levels can affect amphipods directly through infections, or indirectly by depleting the dissolved oxygen in the water column through respiration or decomposition (Boylen and Brock 1973, p. 631).

In summary, special management efforts are needed to protect habitats of the four invertebrates from the potential effects of water contamination from oil and gas operations, agricultural activities, wastewater effluent, and stormwater runoff.

Wildfire

Fire suppression efforts on the Refuge are largely restricted to established roads due to the safety hazards of transporting equipment over karst terrain. This severely limits the ability to quickly suppress fires that threaten fragile aquatic habitats on the Refuge. On March 5, 2000, the Sandhill wildfire burned 1,000 ac (405 ha) of the western portion of the Refuge, including portions of Bitter Creek. The fire burned through Dragonfly Spring, a spring in the headwaters of Bitter Creek, which is occupied habitat for Noel's amphipod and Koster's springsnail. The fire eliminated vegetation shading the spring, and generated a substantial amount of ash in the spring system (Lang 2002, p. 3; NMDGF 2005, p. 15). This resulted in the formation of dense algal mats, increased water temperature fluctuations, increased maximum water temperatures, and decreased dissolved oxygen levels (Lang 2002, pp. 5–6). The pre-fire dominant vegetation of submergent aquatic plants and mixed native grasses within the burned area has also been replaced by the invasive common reed (*Phragmites australis*) (NMDGF 2005, p. 15; 2008, p. 8). Following the fire at Dragonfly Spring, a dramatic reduction in Noel's amphipod was observed, and Koster's springsnail presently occurs at lower densities than were observed prior to the fire (Lang 2002, p. 7; NMDGF 2006a, p. 9). Strategically timed prescribed burns throughout the range of the species would significantly reduce fuel loads, limiting the risk of detrimental wildfires.

Removal of vegetative cover by burning in habitats occupied by Pecos assiminea may be an important factor in decline or loss of populations (Taylor 1987, p. 5, NMDGF 2005, p. 16). It is likely that Pecos assiminea may survive fire or other vegetation reduction if sufficient litter and ground cover remain to sustain appropriate soil moisture and humidity at a microhabitat scale (Service 2004, pp. 4–5; NMDGF 2005, p. 16). Complete combustion of vegetation and litter, high soil temperatures during fire, or extensive vegetation removal resulting in soil and litter drying may create unsuitable habitat conditions and loss of populations (NMDGF 2005, p. 16). Pecos assiminea was discovered at Dragonfly Spring following the burning of habitat there during the Sandhill fire (NMDGF 2005, p. 16). Season of burning, intensity of the fire, and frequency of fire likely determine the magnitude of the fire's effects on Pecos assiminea population persistence and abundance (NMDGF 2005, p. 16), as the species has been found to persist in areas following fires (Lang 2002, p. B8). Pecos assiminea is relatively vulnerable to fires because the assiminea resides at or near the surface of the water.

In summary, special management efforts are needed to correctly plan prescribed fires in order to protect habitats of the four invertebrates from the potential effects of wildfire.

Introduced Species

Introduced species are one of the most serious threats to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). Because the distribution of the four invertebrates is so limited, and their habitat so restricted, introduction of certain nonnative species into their habitat could be devastating. Several invasive terrestrial plant species that may affect the invertebrates are present on the Refuge, including *Tamarix* spp. (saltcedar), common reed, and *Salsola* spp. (Russian thistle). Saltcedar, found on the Refuge and at Diamond Y Spring Complex and East Sandia Spring, threatens spring habitats primarily through the amount of water it consumes and from the chemical composition of the leaves that drop to the ground and into the springs. Saltcedar leaves that fall to the ground and into the water add salt to the system, as their leaves contain salt glands (DiTomaso 1998, p. 333). Additionally, dense stands of common reed choke the stream channel, slowing water velocity and creating more pool-like habitat; this habitat is less suitable for Roswell and Koster's springsnails, which prefer flowing water. Finally, Russian thistle (tumbleweed) can create problems in spring systems by being blown into the channel, slowing flow and overloading the system with organic material (Service 2005b, p. 2). In one case, even efforts to control nonnative vegetation by physical removal of the plants inadvertently caused local extirpations of populations of Pecos assiminea in New Mexico due to vegetation removal that resulted in soil and litter drying, thereby making the habitat unsuitable (Taylor 1987, p. 9; NMDGF 2005, p. 16).

Nonnative mollusks have affected the distribution and abundance of native mollusks in the United States. Of particular concern for three of the invertebrates (Noel's amphipod, Roswell springsnail, and Koster's springsnail) is the red-rim melania (*Melanoides tuberculata*), a snail that can reach tremendous population sizes and has been found in isolated springs in the west. The red-rim melania has caused the decline and local extirpation of native snail species, and it is considered a threat to endemic aquatic snails that occupy springs and streams in the Bonneville Basin of Utah (Rader *et al.* 2003, p. 655). It is easily transported on fishing boats and gear or aquatic plants, and because it reproduces asexually (individuals can develop from unfertilized eggs), a single individual is capable of founding a new population. It has become established in isolated desert spring ecosystems such as Ash Meadows, Nevada, and Cuatro Ciénegas, Mexico, and in the 1990s, the red-rim melania became established in Diamond Y Springs Complex (Echelle 2001, p. 18). It has become the most abundant snail in the upper watercourse of the Diamond Y Springs Complex (Echelle 2001, p. 14). In many locations, this

exotic snail is so numerous that it essentially is the substrate in the small stream channel. The effect the species is having on native snails is not known; however, it probably has less effect on Pecos assiminea than on the other endemic aquatic snails present in the spring because it is aquatic.

In summary, special management efforts are needed to protect the four invertebrates from the potential effects of invasive, nonnative terrestrial plants and invasive, nonnative snails.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining which areas should be designated as critical habitat for the four invertebrates. We relied on information from knowledgeable biologists and recommendations contained in State wildlife resource reports (Cole 1985, p. 102; Jones and Balleau 1996, pp. 1–16; Boghici 1997, pp. 1–120; Balleau *et al.* 1999, pp. 1–42; NMDGF 1999, pp. A1–B46; NMDGF 2006b, pp. 1–16; NMDGF 2007, pp. 1–20; NMDGF 2008, pp. 1–28) and the State recovery plan (NMDGF 2005, pp. 1–80) in making this determination. We also reviewed the available literature pertaining to habitat requirements, historical localities, and current localities for these species. This includes data submitted during section 7 consultations and regional geographic information system (GIS) coverages.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species. In revising critical habitat for the Pecos assiminea, and designating critical habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod, we selected areas within the geographical area occupied at the time of listing that contain the features essential to their conservation that may require special management considerations or protection. We also considered areas outside of the geographical area occupied at the time of listing to designate critical habitat for the four invertebrates, if the areas were considered essential to the conservation of the species.

Occupancy

We consider an area to be occupied at the time of listing if Roswell springsnail, Koster's springsnail, Pecos assiminea, or Noel's amphipod were found to be present by species experts within 5 years of the listing in 2005, and no major habitat modification has occurred that would preclude their presence. Five years is an appropriate time period because surveys may not occur in all areas in all years. The species would be likely to persist in an area over multiple years unless major habitat modification occurred. We are designating as critical habitat all sites occupied by at least one of the four invertebrates at the time of listing because all of these areas contain the physical and biological features essential for the conservation of the species and require special management.

Since the June 22, 2010, critical habitat proposal (75 FR 35375), we identified an additional site along the Rio Hondo on the South Tract of the Refuge that is occupied only by Noel's amphipod. We believe this site was occupied by Noel's amphipod at the time of listing because amphipods were first found at this site in 2006, one year after listing (Warrick 2006, p. 1). However, they were not taxonomically confirmed to be Noel's amphipod until 2010 (Berg 2010, p. 1; Lang 2010, p. 1). Because this spring area is isolated from other occupied areas and no reintroduction efforts have taken place, it has likely been occupied for a very long time, but appropriate surveys had not been previously conducted to verify it. We reasonably assume, therefore, that the site was occupied at the time of listing in 2005.

Essential Areas

For areas not occupied by the species at the time of listing, the Service must demonstrate that these areas are essential to the conservation of the species in order to include them in a critical habitat designation.

There are several locations within the historical range of the four invertebrates where the species no longer occur and that were not occupied at the time of listing. These areas include the South Spring River, Lander Springbrook, Berrendo Spring, and North Spring in New Mexico. These areas no longer contain the physical and biological features to support any of the four invertebrates. South Spring and Lander Spring are both dry due to aquifer depletion (Cole 1981, p. 27; Jones and Balleau 1996, p. 5), and reaches of Berrendo Creek (the springbrook from Berrendo Spring) remain dry and unable to support the invertebrates (NMDGF 2005, p. 18). North Spring, located on the grounds of the Roswell Country Club, was enclosed by a brick wall, native vegetation was removed from the margins of the springhead and springbrook, and the banks were sodded (Cole 1988, p. 2; NMDGF 2005, p. 18). The brick wall at North Spring has since been removed and the spring outflow has been widened, allowing a nearby pond to back into the spring, introducing carp to the system (B. Lang, NMDGF, pers. comm., 2010). Springsnails have not been found at North Spring since 1995, and suitable habitat is not present there.

Because these formerly occupied sites have been so severely impacted in the past (particularly due to the decline of groundwater and subsequent loss of spring flows), it is not likely that they could be rehabilitated in the future or be restored to contain the physical and biological features necessary to support habitat for the four invertebrates. This is because there are currently no mechanisms to restore the spring flow to these historic sites. As a result, these areas are unlikely to contribute to the recovery of the species and are not considered essential to the conservation of the species. Therefore, they are not included in the designation of critical habitat. In addition, the four invertebrates currently exist throughout their ranges in a spatial arrangement that provides sufficient areas for their long-term conservation. Therefore, we are not currently designating any areas outside the geographical area presently occupied by the species, because the unoccupied areas within the historic range are not restorable and the occupied areas are sufficient for the conservation of the species.

Summary

When determining revised critical habitat boundaries within this rule, we made every effort to avoid including structures such as culverts and roads, because areas with such structures lack PCEs for Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such areas. Any such structures inadvertently left inside critical habitat boundaries shown on the maps of this final rule are excluded from this rule by text and are not designated as critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent critical habitat.

We are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient physical and biological features to support life-

history processes essential for the conservation of the species and may require special management. All of the critical habitat units are designated based on the finding that they contain all of the essential physical and biological features necessary to support the life processes of one or more of the four invertebrates.

The Act's definition of critical habitat includes a provision that except under circumstances determined by the Secretary, critical habitat shall not include the entire geographic area which can be occupied by the species (section 3(5)(C)). We have designated as critical habitat all of the areas that are currently occupied by one or more of the four invertebrates. All of these areas are needed for the conservation of these species because of their small geographic ranges and to maintain genetic diversity. Conserving multiple populations of rare species, such as the four invertebrates, lowers the risk of extinction due to an event that negatively affects one population. In addition, the four invertebrates are not migratory, nor is there regular gene exchange between populations or critical habitat units. As a result, all of the currently occupied areas are important to the conservation of the species because they allow for the maintenance of the existing genetic diversity of the four invertebrates. The areas we have designated meet the definition of critical habitat for the four invertebrates and include all populations necessary for conserving the species and maintaining all of the known remaining genetic diversity within each species. Therefore, these circumstances support designating all of the currently occupied habitat.

Final Critical Habitat Designation

We are designating approximately 70.2 ac (28.4 ha) in two units in New Mexico as critical habitat for the Roswell springsnail and Koster's springsnail (Table 1). We are designating approximately 75.9 ac (30.7 ha) in three units in New Mexico as critical habitat for Noel's amphipod (Table 2). We are designating approximately 494.7 ac (200.2 ha) in four units in New Mexico and Texas as critical habitat for the Pecos assiminea (Table 3). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for each of the four invertebrates. All areas being designated as critical habitat were occupied at the time of listing and are currently occupied by at least one of the four invertebrates.

TABLE 1—DESIGNATED CRITICAL HABITAT FOR ROSWELL SPRINGSNAIL AND KOSTER'S SPRINGSNAIL

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership	Size of unit in acres (hectares)
1. Sago/Bitter Creek Complex	Service	31.9 (12.9)
2a. Springsnail/Amphipod Impoundment Complex	Service	35.5 (14.3)
	City of Roswell	2.8 (1.1)
Total		70.2 (28.4)

Note: Area sizes may not sum due to rounding.

TABLE 2—DESIGNATED CRITICAL HABITAT FOR NOEL'S AMPHIPOD

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership	Size of unit in acres (hectares)
1. Sago/Bitter Creek Complex	Service	31.9 (12.9)
2a. Springsnail/Amphipod Impoundment Complex	Service	35.5 (14.3)
	City of Roswell	2.8 (1.1)
3. Rio Hondo	Service	5.8 (2.3)
Total		75.9 (30.7)

Note: Area sizes may not sum due to rounding.

TABLE 3—REVISED CRITICAL HABITAT UNITS FOR PECOS ASSIMINEA

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership	Size of unit in acres (hectares)
1. Sago/Bitter Creek Complex	Service	31.9 (12.9)
2b. Assiminea Impoundment Complex	Service	15.5 (6.3)
	City of Roswell	2.8 (1.1)
4. Diamond Y Springs Complex	The Nature Conservancy	441.4 (178.6)
5. East Sandia Spring	The Nature Conservancy	3.0 (1.2)
Total		494.7 (200.2)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of the units and reasons why the critical habitat units meet the definition of critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea below.

Unit 1: Sago/Bitter Creek Complex

Unit 1 consists of 31.9 ac (12.9 ha) of habitat that was occupied by all four invertebrates at the time of listing and that remains occupied at the present time. We designate this unit as critical habitat for all four species; it contains all of the physical and biological features essential to the conservation of these species. Unit 1 is located on the northern portion of the Middle Tract of Bitter Lake National Wildlife Refuge, Chaves County, New Mexico. The designation includes all springs, seeps, sinkholes, and outflows surrounding Bitter Creek and the Sago Springs complex. Habitat in this unit is in need of special management because of threats by subsurface oil and gas drilling or similar activities that contaminate surface drainage or aquifer water; wildfire; and nonnative fish, crayfish, snails, and vegetation. Therefore, the essential physical and biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats. The entire unit is owned by the Service.

Unit 2a: Springsnail/Amphipod Impoundment Complex

Unit 2a consists of 38.3 ac (15.5 ha) of habitat that was occupied by three of the four invertebrates at the time of listing and that remains occupied at the present time. We designate this unit as critical habitat for Roswell springsnail, Koster's springsnail, and Noel's amphipod; it contains all of the physical and biological features essential to the conservation of these species. Unit 2a is located on the southern portion of the Middle Tract of Bitter Lake National Wildlife Refuge and on property owned by the City of Roswell, Chaves County, New Mexico. This unit includes portions of impoundments 3, 6, 7, and 15, and Hunter Marsh. The designation includes all springs, seeps, sinkholes, and outflows surrounding the Refuge impoundments. Habitat in this unit is threatened by subsurface drilling for oil and gas or similar activities that contaminate surface drainage or aquifer water; wildfire; and nonnative fish, crayfish, snails, and vegetation. Therefore, the essential physical and biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats. Land ownership in this unit includes the Service and the City of Roswell, New Mexico.

Unit 2b: Assiminea Impoundment Complex

Unit 2b consists of 18.4 ac (7.4 ha) of habitat that was occupied by the Pecos assiminea at the time of listing and that remains occupied at the present time. We designate this unit as critical habitat for Pecos assiminea; it contains all of the features essential to the conservation of this species. Unit 2b is located on the southern portion of the Middle Tract of Bitter Lake National Wildlife Refuge and on property owned by the city of Roswell, Chaves County, New Mexico. This unit includes portions of impoundments 7 and 15, and Hunter Marsh. The designation includes all springs, seeps, sinkholes, and outflows surrounding the Refuge impoundments. Habitat in this unit is threatened by subsurface drilling for oil and gas or similar activities that contaminate surface drainage or aquifer water; wildfire; and nonnative fish, crayfish, snails, and vegetation. Therefore, the essential physical and biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats. Land ownership in this unit includes the Service and the City of Roswell, New Mexico.

Unit 3: Rio Hondo

Unit 3 consists of 5.8 ac (2.3 ha) of habitat that is currently occupied by Noel's amphipod. We designate this unit as critical habitat for Noel's amphipod only. It contains all of the features essential to the conservation of this species. We consider this site to be occupied by Noel's amphipod at the time of listing. Although the amphipods were first found at this site in 2006, one year after listing (Warrick 2006, p. 1), they were taxonomically confirmed to be Noel's amphipod in 2010 (Berg 2010, p. 1; Lang 2010, p. 1). Unit 3 is located on the South Tract of Bitter Lake National Wildlife Refuge, Chaves County, New Mexico. The designation includes all springs and seeps along approximately 0.4 mi (0.64 km) of the Rio Hondo, including the river channel and both banks. Habitat in this unit is threatened by subsurface drilling for oil and gas or similar activities that contaminate surface drainage or aquifer water; nonnative fish, crayfish, snails, and vegetation; chemical fertilizers and pesticides applied to adjacent farmland; contaminants in the Rio Hondo from upstream of the amphipod populations; and fire. Therefore, the essential physical and biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats. The entire unit is owned by the Service.

Unit 4: Diamond Y Springs Complex

Unit 4 consists of 441.4 ac (178.6 ha) of habitat that is currently occupied by Pecos assiminea. We designate this unit for Pecos assiminea only. This unit contains all of the features essential to the conservation of the Pecos assiminea and was occupied by this species at the time of listing. The designation includes the Diamond Y Spring and approximately 4.2 mi (6.8 km) of its outflow, ending at approximately 0.5 mi (0.8 km) downstream of the State Highway 18 bridge crossing. Also included in this unit is approximately 0.5 mi (0.8 km) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic (wet) soil environments within the spring, outflow, and portion of Leon Creek are also designated, as these areas are considered habitat for the Pecos assiminea. This designation is approximately 441.4 ac (178.6 ha) of aquatic and neighboring mesic habitat. Habitat in this unit is threatened by increased groundwater pumping; subsurface drilling for oil and gas or similar activities that contaminate surface drainage or aquifer water; wildfire; and nonnative fish, crayfish, snails, and vegetation. Therefore, the essential physical and biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats. This unit occurs entirely on private lands managed as a nature preserve by The Nature Conservancy.

Unit 5: East Sandia Spring

Unit 5 consists of 3.0 ac (1.2 ha) of aquatic and mesic habitat that is currently occupied by Pecos assiminea. We designate this unit for Pecos assiminea only. This unit contains all of the features essential to the conservation of the Pecos assiminea and was occupied by this species at the time of listing. East Sandia Spring is at the base of the Davis Mountains just east of Balmorhea, Texas, and is part of the San Solomon-Balmorhea Spring Complex, the largest remaining desert spring system in Texas where the Pecos assiminea is found. The designation includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas, comprising

the physical and biological features for the Pecos assiminea. Habitat in this unit is threatened by increased groundwater pumping; wildfire; and nonnative fish, crayfish, snails, and vegetation. Therefore, the essential physical and biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats. This unit occurs entirely on private lands managed as a nature preserve by The Nature Conservancy. Our previous designation of critical habitat for the Pecos assiminea (70 FR 46304, August 9, 2005) included 16.5 ac (6.7 ha) of critical habitat in this unit. Updated GIS techniques have allowed us to more closely map the wetlands, springs, and seeps in this area, resulting in fewer acres proposed for critical habitat, and 3.0 ac (1.2 ha) are being designated in this rule.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those physical and biological features that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. As discussed above, the role of critical habitat is to support the life history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Examples of activities that, when authorized, funded, or carried out by a Federal agency, may affect critical habitat and therefore should result in section 7 consultation for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea include, but are not limited to:

(1) Actions that would contaminate or cause significant degradation of habitat occupied by these species, including surface drainage water or aquifer water quality. Such activities could include, but are not limited to, the use of chemical insecticides or herbicides that results in killing or injuring these species; subsurface drilling or similar activities within the 12,585-ac (5,093-ha) Federal mineral estate and 9,945-ac (4,025-ha) habitat protection zone in New Mexico (Balleau *et al.* 1999, p. 3;

BLM 2002, p. 1) that contaminate or cause significant degradation of water quality in surface or aquifer waters supporting the habitat occupied by these species; septic tank placement and use where the groundwater is connected to sinkhole or other aquatic habitats occupied by these species; and unauthorized discharges or dumping of toxic chemicals or other pollutants into the areas supporting the four invertebrates. These activities could alter water conditions to levels that are beyond the tolerances of the invertebrates and result in degradation of their occupied habitat to an extent that individuals are killed or injured or essential behaviors such as breeding, feeding, and sheltering are impaired.

(2) Actions that would destroy or alter habitat for the four invertebrates. Such activities could include, but are not limited to, discharging fill material into occupied sites, draining, ditching, tilling, channelizing, drilling, pumping, or other activities that interrupt surface or groundwater flow into or out of the spring complexes and occupied habitats of these species. These activities could result in significant impairment of essential life-sustaining requirements such as breeding, feeding, and sheltering.

(3) Actions that would introduce nonnative species into occupied habitats for the four invertebrates. Potential nonnative species include, but are not limited to, mosquitofish, crayfish, nonnative snails, or vegetation. These nonnative species compete for scarce resources and some may predate upon the four invertebrates.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the areas we are designating as critical habitat for the four invertebrates; therefore, we are not exempting lands from this final designation of critical habitat for the four invertebrates pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, the Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on June 22, 2010 (75 FR 35375), based on the proposed rule published concurrently. We accepted comments on the draft analysis until August 23, 2010. We again accepted comments on the updated draft economic analysis from February 17, 2011, to March 21, 2011 (76 FR 9297). Following the close of the comment periods, a final analysis of the potential economic effects of the designation was completed in April 2011 taking into consideration the public comments and any new information.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the four invertebrates; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final

designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2005 when the four invertebrates were listed (70 FR 46304), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

The FEA quantifies economic impacts of conservation efforts for the four invertebrates associated with the following categories of activity:

(1) Project modifications made by oil and gas developers, consistent with requirements under the BLM Habitat Protection Zone;

(2) Habitat management costs incurred by the Service, the New Mexico Department of Game and Fish, and The Nature Conservancy; and

(3) Potential lost farm income due to prohibition of chemical spraying within critical habitat and a buffer.

Because all of the critical habitat we are designating is currently occupied by the species, ongoing project modifications and conservation measures are already required to satisfy the jeopardy standard. In addition, most of the critical habitat we are designating is already held in conservation status, and the small portion of critical habitat owned by the City of Roswell has already been designated as critical habitat for the Pecos sunflower (*Helianthus paradoxus*) and is unsuitable for development due to presence of wetlands. Habitat management costs are attributable to existing conservation agreements and are therefore also classified as baseline costs (i.e., these costs will be incurred even if critical habitat designation does not occur). Finally, most section 7 consultations would be pursued in the absence of critical habitat. To the extent that incremental costs are incurred in the context of a section 7 consultation regarding the species, they will be borne by public agencies rather than private entities. Because of these factors, there were few actual incremental costs of this rulemaking. Incremental costs are those costs expected to be incurred as a result of critical habitat designation for the four invertebrates. The FEA found the overall annualized incremental costs associated with the designation of critical habitat for the four invertebrates are estimated to be approximately $6,420. These costs derive from the added effort associated with considering adverse modification in the context of section 7 consultation.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting his discretion to exclude any areas from this designation of critical habitat for the four invertebrates based on economic impacts. A copy of the final economic analysis with supporting documents may be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES**) or for downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea are not owned or managed by the DOD, and therefore, we anticipate no impact to national security. We are aware that there are DOD lands (managed by New Mexico Air National Guard) in the vicinity of the Refuge, east of the Pecos River, but our designation does not include these lands, and the designation will have no affect on the operations or land management of these lands. Therefore, we anticipate no impact to national security, and the Secretary is not exerting his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any habitat conservation plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea, and the final designation does not include any tribal lands or trust resources. We anticipate no impact to tribal lands, partnerships, or HCPs from this critical habitat designation. In addition, we considered other relevant impacts during preparation of the environmental assessment pursuant to the National Environmental Policy Act (see Required Determinations, *National Environmental Policy Act* below) and found no other significant impacts that would warrant our consideration for excluding any areas from critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Editorial Changes

When we listed Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea as endangered species on August 9, 2005 (70 FR 46304), we neglected to insert the appropriate date code in the "When listed" column of the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Further, information we had intended to display in the "Critical habitat" column was misplaced under the "When listed" column, and information intended for the "Special rules" column was misplaced under the "Critical habitat" column. This final rule corrects these errors. This change is purely editorial; it does not affect the substance of the listing rule.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small businesses affected within particular types of economic activities. We considered potential effects to 936 small businesses in the FEA. We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the "Adverse Modification" Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the four invertebrates and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 5 and Appendix A of the analysis and evaluates the potential for economic impacts. Activities anticipated occurring within the next 20 years within or adjacent to the critical habitat we are designating for the four invertebrates that potentially affect small businesses include: oil and gas production; irrigated agricultural production; and livestock operations.

We determined from our analysis (Appendix A in FEA) that there will be minimal additional economic impacts to small entities resulting from the designation of critical habitat, because almost all of the potential costs of modification of activities and conservation identified in the economic analysis represent baseline costs that would be realized in the absence of critical habitat. The economic analysis estimates the overall annual incremental costs associated with the designation of critical habitat for the four invertebrates to be very modest, at approximately $6,420. All of these costs would derive from the added effort associated with considering adverse modification in the context of section 7 consultations.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on our analysis and currently available information, we concluded that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects

when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. The final economic analysis (Appendix A.2) finds that none of these criteria are relevant to this analysis because any potential effects on oil and natural gas operations will be very small and not approach the threshold for a significant adverse effect. Thus, based on information in the economic analysis, energy-related impacts associated with Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) This rule will not significantly or uniquely affect small governments. The public lands we are designating as critical habitat are owned by the City of Roswell and the Service. Small governments, such as the City of Roswell, will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. As discussed above and in our environmental assessment, the areas owned by the City of Roswell that are being designated as critical habitat for the four invertebrates have already been designated as critical habitat for the Pecos sunflower and are unsuitable for development because of the presence of wetlands. In addition, we do not anticipate significant effects to the City of Roswell's wastewater treatment plant from designation of the Rio Hondo unit. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the four invertebrates does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in New Mexico and Texas. We received comments from NMDGF and have addressed them in the Summary of Comments and Recommendations section of this rule. The designation of critical habitat in areas currently occupied by the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the

legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

However, when the range of the species includes States within the Tenth Circuit, such as that of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for the proposal when it is finished.

We performed the NEPA analysis and drafts of the environmental assessment were available for public comment on June 22, 2010 (75 FR 35375), and February 17, 2011 (76 FR 9297). The final environmental assessment has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment online at *http://www.regulations.gov,* by mail from the New Mexico Ecological Services Field Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/southwest/es/NewMexico/.*

The final environmental assessment included a detailed analysis of the potential effects of the critical habitat designation on resource categories, including: Water resources; oil and gas; land management; livestock grazing and dairy operation; Roswell wastewater treatment facility; recreation; socioeconomic conditions and environmental justice; and the cumulative effects. The scope of the effects were primarily limited to those activities involving Federal actions, because critical habitat designation does not have any impact on the environment other than through the ESA section 7 consultation process conducted for Federal actions. Private actions that have no Federal involvement are not affected by critical habitat designation.

Based on the review and evaluation of the information contained in the environmental assessment, we determined that the designation of critical habitat for the four invertebrates does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of NEPA.

Pursuant to the Council on Environmental Quality regulations for implementing NEPA, preparation of an environmental impact statement is required if an action is determined to significantly affect the quality of the human environment (40 CFR § 1502.3). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27). Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context of both short- and long-term effects of proposed designation of critical habitat are the proposed critical habitat units in Chaves County, New Mexico, and Pecos and Reeves Counties, Texas, totaling about 521 acres (211 ha), and the surrounding areas. The effects of proposed critical habitat designation at this scale, although long-term, would be small. Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]).

The intensity of potential impacts that may result from designation of critical habitat for the four invertebrates under the proposed action is considered low. This conclusion is reached based on the following findings in the environmental assessment:

(1) The potential impacts may be both beneficial and adverse, but minor.

(2) There would be no effects to public health or safety from proposed designation of critical habitat.

(3) The proposed action may provide a small benefit to wetlands and ecologically critical areas, and would not affect other unique characteristics of the geographic area.

(4) Potential impacts from critical habitat designation on the quality of the environment are unlikely to be highly controversial.

(5) Potential impacts from critical habitat do not involve a high degree of uncertainty or unique or unknown risks.

(6) Proposed designation of critical habitat for the four invertebrate species does not set a precedent for future actions with significant effects.

(7) Proposed designation of critical habitat would not result in significant cumulative impacts.

(8) Significant cultural, historical, or scientific resources are not likely to be affected by proposed designation of critical habitat.

(9) Critical habitat designation may have a beneficial effect on the four invertebrates.

(10) Critical habitat designation would not violate any Federal, state, or local laws or requirements imposed for the protection of the environment.

The effects of proposed critical habitat designation at this scale, although long-term, would be small. Therefore, we found that the proposed designation will not significantly affect the quality of the human environment and an environmental impact statement is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, "American Indian Tribal

Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no unoccupied Tribal lands that are essential for the conservation of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. Therefore, we are not designating critical habitat for the four invertebrates on Tribal lands.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this package are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for:

■ a. "Pecos assiminea", "Springsnail, Koster's", and "Springsnail, Roswell" under SNAILS; and

■ b. "Amphipod, Noel's" under CRUSTACEANS, in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Pecos assiminea	*Assiminea pecos*	U.S.A. (NM, TX)	NA	E	770	17.95(f)	NA
*	*	*	*	*	*	*	
Springsnail, Koster's	*Juturnia kosteri*	*U.S.A. (NM)*	*NA*	*E*	*770*	*17.95(f)*	*NA*
Springsnail, Roswell	*Pyrgulopsis roswellensis.*	*U.S.A. (NM)*	*NA*	*E*	*770*	*17.95(f)*	*NA*
*	*	*	*	*	*	*	
CRUSTACEANS							
*	*	*	*	*	*	*	
Amphipod, Noel's	*Gammarus desperatus.*	U.S.A. (NM)	NA	E	770	17.95(h)	NA
*	*	*	*	*	*	*	

■ 2. Amend § 17.95 by:

■ a. In paragraph (f), revising the entry for "Pecos Assiminea (*Assiminea pecos*)" and adding an entry for "Koster's springsnail (*Juturnia kosteri*) and Roswell springsnail (*Pyrgulopsis roswellensis*)" in the same alphabetical order that those species appear in the table at 50 CFR 17.11(h), to read as follows; and

■ b. In paragraph (h), adding an entry for "Noel's amphipod (*Gammarus desperatus*)" in the same alphabetical order that the species appears in the table at 50 CFR 17.11(h), to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Pecos Assiminea (*Assiminea Pecos*)

(1) Critical habitat units are depicted for Chaves County, New Mexico, and Pecos and Reeves Counties, Texas, on the maps below.

(2) The primary constituent element of critical habitat for the Pecos assiminea is moist or saturated soil at stream or spring run margins:

(i) That consists of wet mud or occurs beneath mats of vegetation;

(ii) That is within 1 inch (2 to 3 centimeters) of flowing water;

(iii) That has native wetland plant species, such as salt grass or sedges, that provide leaf litter, shade, cover, and appropriate microhabitat;

(iv) That contains wetland vegetation adjacent to spring complexes that supports the algae, detritus, and bacteria needed for foraging; and

(v) That has adjacent spring complexes with:

(A) Permanent, flowing, fresh to moderately saline water with no or no more than low levels of pollutants; and

(B) Stable water levels with natural diurnal and seasonal variations.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Sago/Bitter Creek Complex, Chaves County, New Mexico.

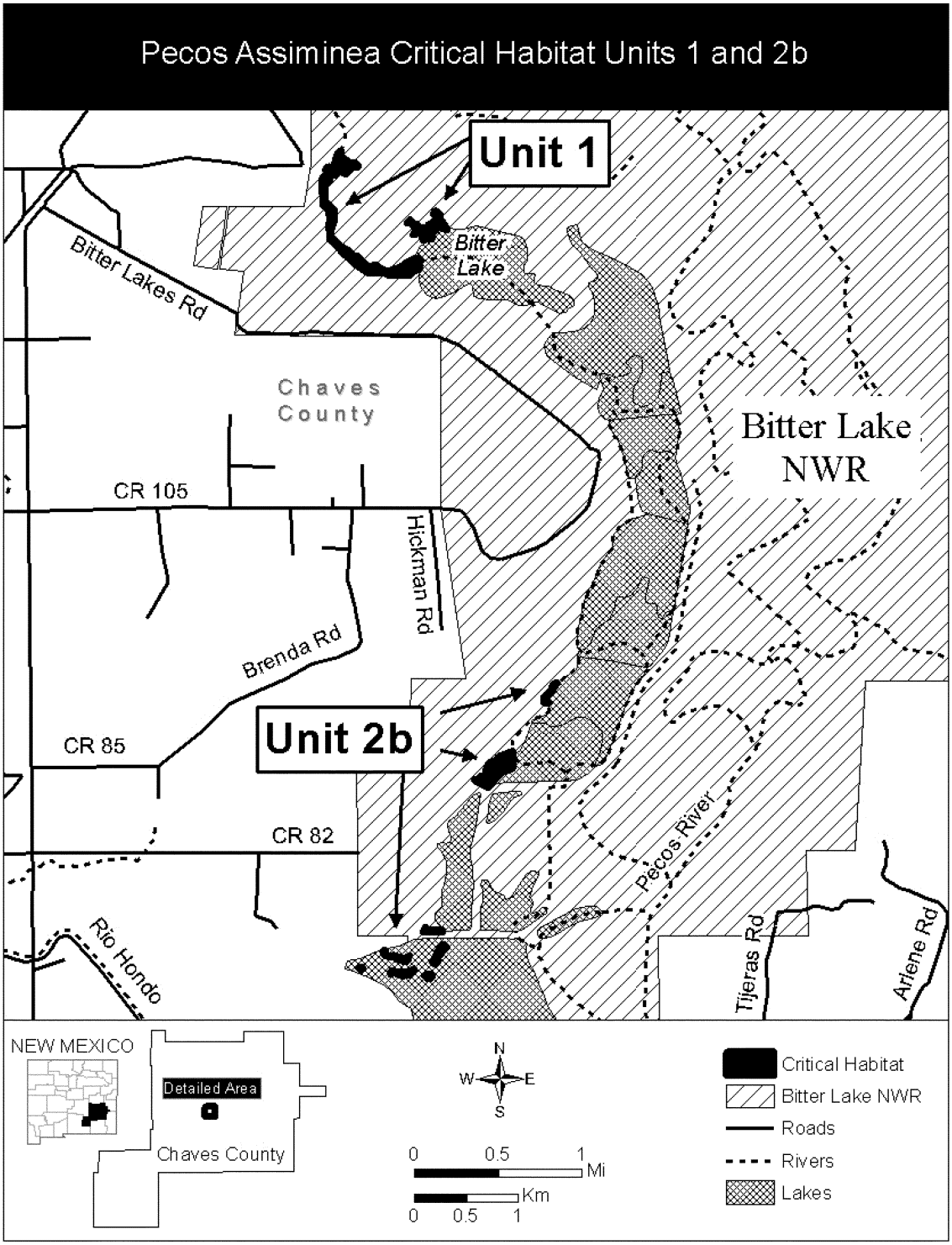
(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N):

(A) 553337, 3705095; 553357, 3705102; 553360, 3705067; 553371, 3705041; 553420, 3705010; 553433, 3704982; 553482, 3704987; 553499, 3704955; 553437, 3704946; 553424, 3704909; 553401, 3704883; 553340, 3704906; 553319, 3704879; 553266, 3704869; 553274, 3704816; 553240, 3704797; 553240, 3704623; 553306, 3704532; 553300, 3704419; 553280, 3704354; 553287, 3704287; 553338, 3704221; 553438, 3704145; 553459, 3704108; 553499, 3704091; 553533, 3704059; 553559, 3704024; 553588, 3704004; 553650, 3704024; 553655, 3704014; 553654, 3703981; 553699, 3703983; 553745, 3703960; 553775, 3703978; 553799, 3703979; 553828, 3704003; 553859, 3704016; 553871, 3704037; 553907, 3704053; 553938, 3704074; 553964, 3704078; 553983, 3704080; 553993, 3703978; 553939, 3703960; 553917, 3703914; 553903, 3703927; 553758, 3703909; 553710, 3703936; 553656, 3703932; 553567, 3703940; 553484, 3704010; 553426, 3704085; 553396, 3704109; 553357, 3704150; 553270, 3704273; 553271, 3704299; 553270, 3704344; 553255, 3704398; 553274, 3704444; 553254, 3704540; 553218, 3704577; 553197, 3704824; 553205, 3704843; 553246, 3704885; 553233, 3704911; 553238, 3704941; 553265, 3704950; 553294, 3704941; 553312, 3705045; 553337, 3705095.

(B) 553906, 3704450; 553915, 3704455; 553920, 3704452; 553917, 3704438; 553926, 3704432; 553935, 3704420; 553957, 3704404; 553965, 3704405; 553974, 3704406; 553985, 3704388; 553993, 3704387; 554019, 3704376; 554037, 3704362; 554045, 3704389; 554060, 3704406; 554083, 3704416; 554085, 3704429; 554110, 3704452; 554132, 3704457; 554121, 3704474; 554106, 3704494; 554102, 3704531; 554119, 3704531; 554135, 3704523; 554144, 3704510; 554157, 3704481; 554154, 3704460; 554174, 3704431; 554192, 3704393; 554210, 3704366; 554216, 3704346; 554190, 3704357; 554174, 3704365; 554166, 3704375; 554159, 3704395; 554146, 3704394; 554126, 3704391; 554117, 3704384; 554123, 3704364; 554119, 3704346; 554105, 3704337; 554091, 3704312; 554097, 3704289; 554094, 3704269; 554084, 3704261; 554059, 3704273; 554052, 3704260; 554034, 3704259; 554022, 3704248; 554005, 3704272; 554024, 3704293; 554040, 3704300; 554041, 3704321; 554016, 3704332; 554006, 3704317; 553974, 3704323; 553963, 3704324; 553963, 3704316; 553966, 3704314; 553961, 3704302; 553949, 3704302; 553936, 3704302; 553934, 3704311; 553946, 3704321; 553952, 3704323; 553946, 3704332; 553946, 3704353; 553958, 3704373; 553964, 3704381; 553958, 3704392; 553946, 3704391; 553938, 3704396; 553934, 3704394; 553930, 3704397; 553930, 3704409; 553924, 3704409; 553906, 3704413; 553902, 3704424; 553894, 3704419; 553885, 3704419; 553898, 3704448; 553906, 3704450.

(ii) *Note:* Map of Pecos Assiminea Critical Habitat Units 1 and 2b follows:

BILLING CODE 4310–55–P


Pecos Assiminea Critical Habitat Units 1 and 2b
Unit 1
Bitter Lake
Bitter Lakes Rd
Chaves County
Bitter Lake NWR
CR 105
Hickman Rd
Brenda Rd
Unit 2b
CR 85
CR 82
Pecos River
Rio Hondo
Tijeras Rd
Arlene Rd
NEW MEXICO
Detailed Area
Chaves County
N
W
E
S
0 0.5 1 Mi
0 0.5 1 Km
Critical Habitat
Bitter Lake NWR
Roads
Rivers
Lakes

(6) Unit 2b: Assiminea Impoundment Complex, Chaves County, New Mexico.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N):

(A) 554768, 3699378; 554765, 3699345; 554761, 3699217; 554681, 3699179; 554608, 3699086; 554569, 3699029; 554501, 3699079; 554455, 3699103; 554488, 3699119; 554497, 3699142; 554543, 3699151; 554539, 3699185; 554571, 3699264; 554587, 3699280; 554622, 3699291; 554639, 3699320; 554667, 3699343; 554699, 3699341; 554719, 3699367; 554748, 3699380; 554768, 3699378.

(B) 554053, 3697672; 554064, 3697692; 554077, 3697704; 554085, 3697691; 554078, 3697672; 554215, 3697667; 554216, 3697653; 554045, 3697649; 554053, 3697672.

(C) 554223, 3697539; 554247, 3697505; 554195, 3697448; 554171, 3697394; 554179, 3697365; 554152, 3697343; 554132, 3697360; 554123, 3697373; 554155, 3697405; 554167, 3697472; 554223, 3697539.

(D) 554070, 3697244; 554099, 3697254; 554134, 3697240; 554127, 3697220; 554096, 3697208; 554071, 3697229; 554070, 3697244.

553784, 3697256; 553807, 3697291; 553829, 3697279; 553849, 3697268; 553881, 3697270; 553911, 3697274; 553931, 3697267; 553979, 3697295; 553989, 3697296; 553980, 3697274; 553965, 3697264; 553963, 3697246; 553939, 3697239; 553914, 3697242; 553901, 3697230; 553881, 3697235; 553872, 3697251; 553848, 3697246; 553833, 3697254; 553829, 3697262; 553821, 3697262; 553799, 3697250; 553784, 3697256.

(E) 553928, 3697415; 553935, 3697425; 553952, 3697426; 553941, 3697416; 553940, 3697405; 553942, 3697385; 553927, 3697367; 553852, 3697391; 553833, 3697408; 553822, 3697403; 553766, 3697414; 553739, 3697424; 553735, 3697478; 553747, 3697483; 553764, 3697425; 553795, 3697420; 553820, 3697429; 553849, 3697415; 553880, 3697408; 553905, 3697395; 553921, 3697407; 553928, 3697415.

(F) 553538, 3697315; 553550, 3697308; 553572, 3697322; 553580, 3697314; 553556, 3697287; 553538, 3697302; 553538, 3697315.

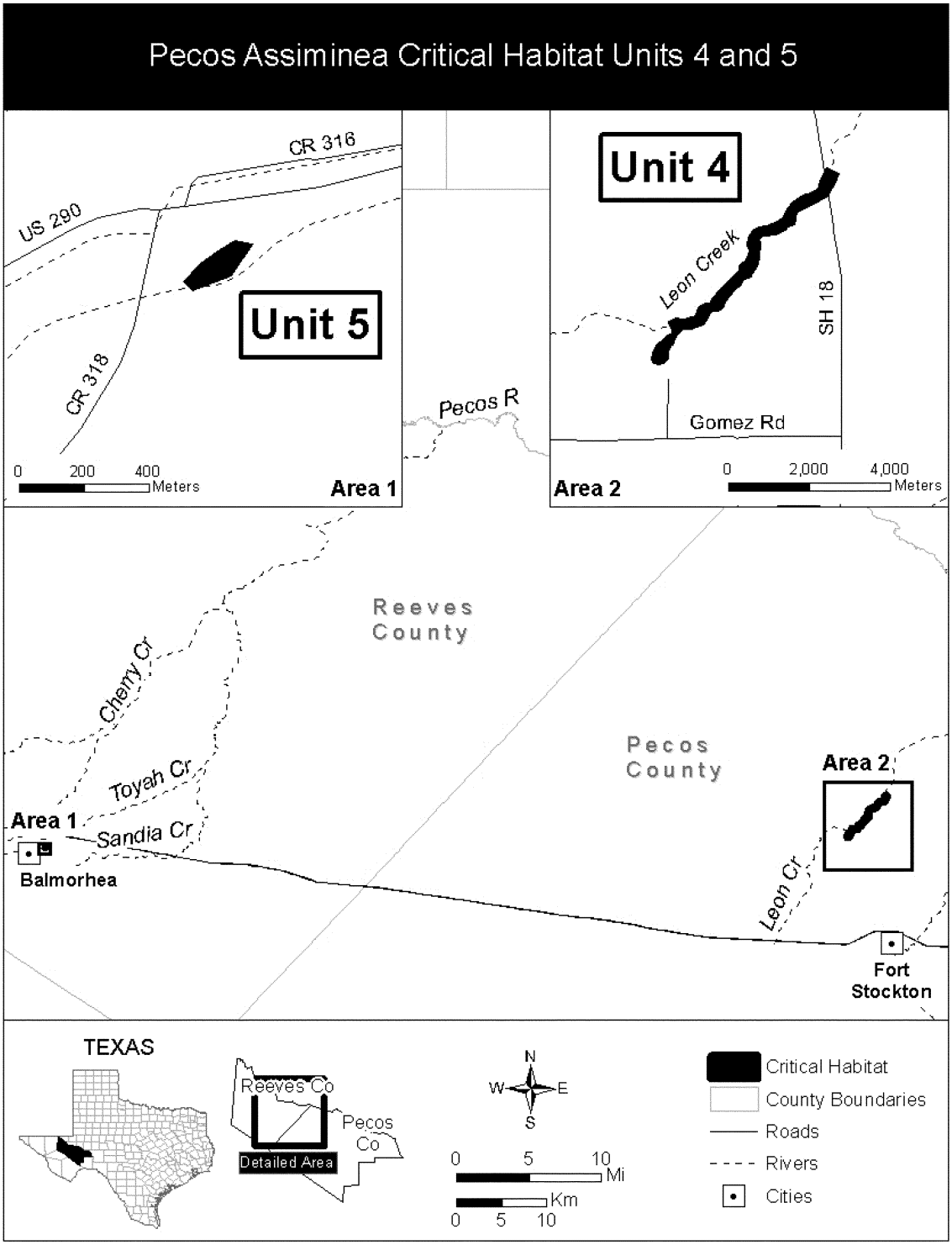
(G) 555054, 3699844; 555015, 3699840; 555015, 3699840; 555006, 3699890; 555065, 3699975; 555086, 3700030; 555115, 3700032; 555114, 3700030; 555076, 3699953; 555038, 3699915; 555039, 3699861; 555054, 3699844.

(ii) *Note:* Map of Unit 2b for Pecos assiminea is provided at paragraph (5)(ii) of this entry.

(7) Unit 4: Diamond Y Springs Complex, Pecos County, Texas.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N): 700260, 3434916; 700413, 3434953; 700640, 3435053; 700734, 3435148; 700861, 3435401; 700950, 3435543; 701171, 3435706; 701340, 3435785; 701466, 3435869; 701519, 3436053; 701645, 3436390; 701919, 3436264; 701835, 3435969; 701714, 3435753; 701698, 3435711; 701356, 3435479; 701145, 3435353; 701045, 3435258; 701024, 3435174; 701029, 3435095; 700998, 3434990; 700861, 3434921; 700813, 3434832; 700629, 3434721; 700555, 3434727; 700445, 3434700; 700371, 3434700; 700303, 3434658; 700255, 3434600; 700281, 3434521; 700281, 3434390; 700281, 3434300; 700276, 3434147; 700250, 3433984; 700203, 3433889; 700113, 3433726; 700124, 3433684; 700055, 3433652; 699981, 3433626; 699923, 3433563; 699902, 3433489; 699755, 3433326; 699665, 3433189; 699581, 3433047; 699550, 3432931; 699486, 3432852; 699407, 3432826; 699318, 3432820; 699249, 3432747; 699202, 3432594; 699128, 3432494; 698991, 3432415; 698849, 3432378; 698681, 3432352; 698607, 3432262; 698533, 3432136; 698491, 3431973; 698428, 3431931; 698396, 3431794; 698386, 3431620; 698296, 3431515; 698175, 3431473; 698070, 3431509; 698038, 3431594; 698054, 3431794; 698149, 3431983; 698260, 3432110; 698323, 3432189; 698449, 3432283; 698449, 3432362; 698391, 3432436; 698370, 3432552; 698539, 3432647; 698665, 3432605; 698727, 3432620; 698791, 3432636; 698955, 3432705; 698981, 3432826; 699018, 3432931; 699134, 3433015; 699234, 3433021; 699286, 3433094; 699302, 3433157; 699313, 3433168; 699460, 3433384; 699650, 3433610; 699792, 3433784; 699834, 3433837; 699850, 3433947; 699893, 3434001; 699929, 3434047; 699974, 3434107; 700013, 3434158; 700055, 3434326; 700013, 3434463; 700013, 3434648; 700108, 3434827; 700260, 3434916.

(ii) *Note:* Map of Pecos Assiminea Critical Habitat Units 4 and 5 follows:



BILLING CODE 4310–55–C

(8) Unit 5: East Sandia Spring, Reeves County, Texas.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N): 621217, 3429265; 621262, 3429320; 621304, 3429356; 621352, 3429393; 621397, 3429383; 621397, 3429384; 621398, 3429384; 621342, 3429283; 621240, 3429237; 621217, 3429265.

(ii) Map of Unit 5 for Pecos assiminea is provided at paragraph (7)(ii) of this entry.

* * * * *

Koster's Springsnail (*Juturnia Kosteri*) and Roswell Springsnail (*Pyrgulopsis Roswellensis*)

(1) Critical habitat units are depicted for Chaves County, New Mexico, on the map below.

(2) The primary constituent element of critical habitat for the Koster's springsnail and Roswell springsnail is springs and spring-fed wetland systems that:

(i) Have permanent, flowing water with no or no more than low levels of pollutants;

(ii) Have slow to moderate water velocities;

(iii) Have substrates ranging from deep organic silts to limestone cobble and gypsum;

(iv) Have stable water levels with natural diurnal (daily) and seasonal variations;

(v) Consist of fresh to moderately saline water;

(vi) Vary in temperature between 50–68 °F (10–20 °C) with natural seasonal and diurnal variations slightly above and below that range; and

(vii) Provide abundant food, consisting of:

(A) Algae, bacteria, and decaying organic material; and

(B) Submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Sago/Bitter Creek Complex, Chaves County, New Mexico.

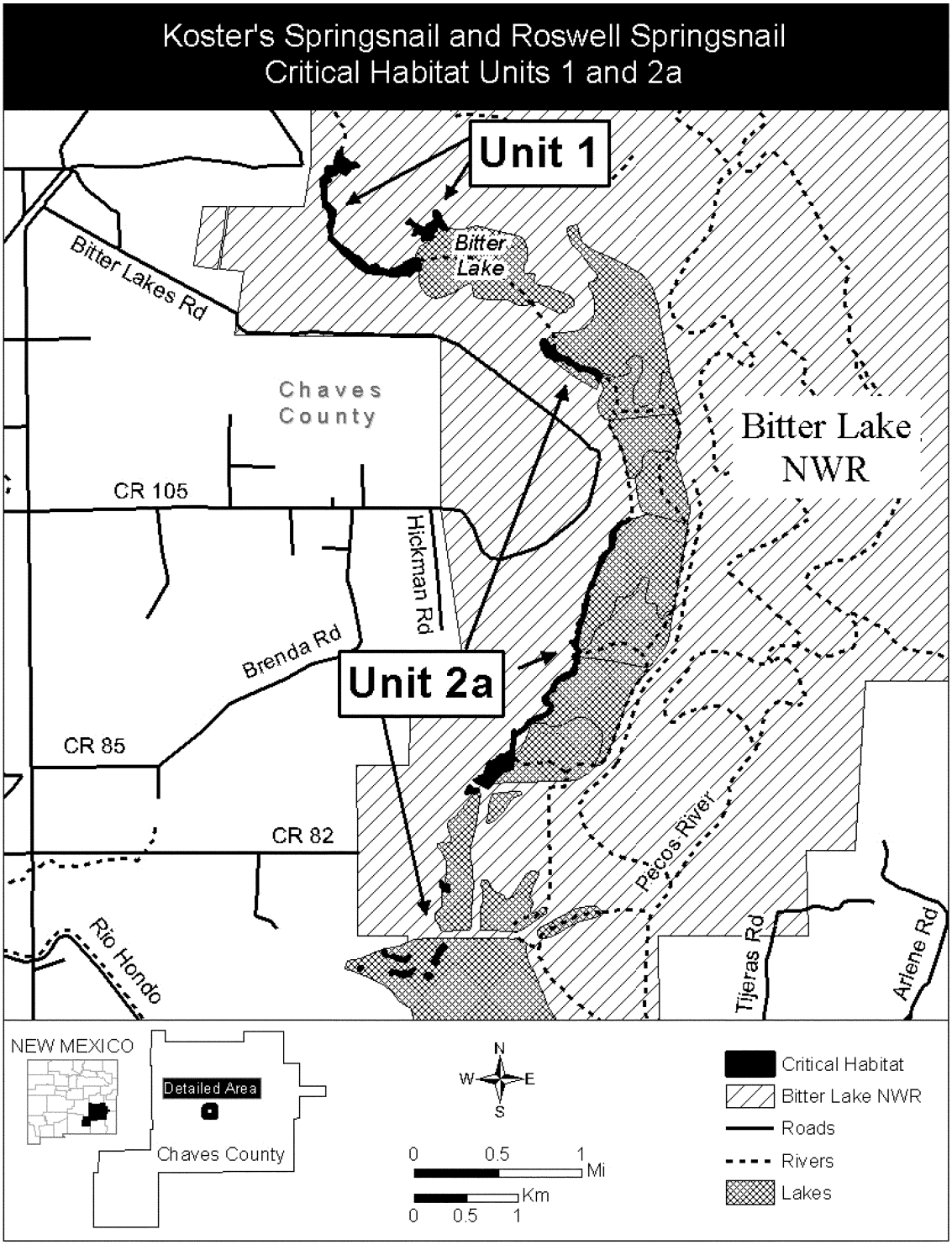
(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N):

(A) 553337, 3705095; 553357, 3705102; 553360, 3705067; 553371, 3705041; 553420, 3705010; 553433, 3704982; 553482, 3704987; 553499, 3704955; 553437, 3704946; 553424, 3704909; 553401, 3704883; 553340, 3704906; 553319, 3704879; 553266, 3704869; 553274, 3704816; 553240, 3704797; 553240, 3704623; 553306, 3704532; 553300, 3704419; 553280, 3704354; 553287, 3704287; 553338, 3704221; 553438, 3704145; 553459, 3704108; 553499, 3704091; 553533, 3704059; 553559, 3704024; 553588, 3704004; 553650, 3704024; 553655, 3704014; 553654, 3703981; 553699, 3703983; 553745, 3703960; 553775, 3703978; 553799, 3703979; 553828, 3704003; 553859, 3704016; 553871, 3704037; 553907, 3704053; 553938, 3704074; 553964, 3704078; 553983, 3704080; 553993, 3703978; 553939, 3703960; 553917, 3703914; 553903, 3703927; 553758, 3703909; 553710, 3703936; 553656, 3703932; 553567, 3703940; 553484, 3704010; 553426, 3704085; 553396, 3704109; 553357, 3704150; 553270, 3704273; 553271, 3704299; 553270, 3704344; 553255, 3704398; 553274, 3704444; 553254, 3704540; 553218, 3704577; 553197, 3704824; 553205, 3704843; 553246, 3704885; 553233, 3704911; 553238, 3704941; 553265, 3704950; 553294, 3704941; 553312, 3705045; 553337, 3705095.

(B) 553906, 3704450; 553915, 3704455; 553920, 3704452; 553917, 3704438; 553926, 3704432; 553935, 3704420; 553957, 3704404; 553965, 3704405; 553974, 3704406; 553985, 3704388; 553993, 3704387; 554019, 3704376; 554037, 3704362; 554045, 3704389; 554060, 3704406; 554083, 3704416; 554085, 3704429; 554110, 3704452; 554132, 3704457; 554121, 3704474; 554106, 3704494; 554102, 3704531; 554119, 3704531; 554135, 3704523; 554144, 3704510; 554157, 3704481; 554154, 3704460; 554174, 3704431; 554192, 3704393; 554210, 3704366; 554216, 3704346; 554190, 3704357; 554174, 3704365; 554166, 3704375; 554159, 3704395; 554146, 3704394; 554126, 3704391; 554117, 3704384; 554123, 3704364; 554119, 3704346; 554105, 3704337; 554091, 3704312; 554097, 3704289; 554094, 3704269; 554084, 3704261; 554059, 3704273; 554052, 3704260; 554034, 3704259; 554022, 3704248; 554005, 3704272; 554024, 3704293; 554040, 3704300; 554041, 3704321; 554016, 3704332; 554006, 3704317; 553974, 3704323; 553963, 3704324; 553963, 3704316; 553966, 3704314; 553961, 3704302; 553949, 3704302; 553936, 3704302; 553934, 3704311; 553946, 3704321; 553952, 3704323; 553946, 3704332; 553946, 3704353; 553958, 3704373; 553964, 3704381; 553958, 3704392; 553946, 3704391; 553938, 3704396; 553934, 3704394; 553930, 3704397; 553930, 3704409; 553924, 3704409; 553906, 3704413; 553902, 3704424; 553894, 3704419; 553885, 3704419; 553898, 3704448; 553906, 3704450.

(ii) *Note:* Map of Koster's Springsnail and Roswell Springsnail Critical Habitat Units 1 and 2a follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Unit 2a: Springsnail/Amphipod Impoundment Complex, Chaves County, New Mexico.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N):

(A) 554982, 3703317; 555004, 3703315; 555011, 3703299; 555053, 3703215; 555079, 3703205; 555094, 3703168; 555171, 3703138; 555222, 3703093; 555259, 3703078; 555289, 3703055; 555338, 3703047; 555420, 3703024; 555458, 3702955; 555442, 3702940; 555422, 3702925; 555406, 3702974; 555330, 3703017; 555277, 3703025; 555229, 3703068; 555188, 3703090; 555151, 3703125; 555131, 3703116; 555075, 3703115; 555042, 3703144; 555014, 3703147; 554978, 3703231; 554964, 3703290; 554982, 3703317.

(B) 555695, 3701598; 555603, 3701536; 555568, 3701479; 555565, 3701460; 555559, 3701324; 555532, 3701296; 555502, 3701277; 555355, 3700892; 555356, 3700852; 555342, 3700778; 555333, 3700694; 555294, 3700533; 555271, 3700409; 555281, 3700322; 555273, 3700266; 555257, 3700265; 555238, 3700281; 555247, 3700304; 555268, 3700316; 555269, 3700343; 555221, 3700433; 555257, 3700433; 555263, 3700446; 555269, 3700498; 555260, 3700534; 555284, 3700550; 555285, 3700567; 555274, 3700604; 555288, 3700636; 555312, 3700666; 555322, 3700725; 555325, 3700767; 555345, 3700858; 555350, 3700891; 555355, 3700901; 555365, 3700958; 555379, 3700992; 555392, 3701014; 555436, 3701152; 555450, 3701200; 555450, 3701241; 555472, 3701247; 555480, 3701271; 555504, 3701300; 555520, 3701303; 555534, 3701340; 555529, 3701451; 555549, 3701492; 555589, 3701560; 555621, 3701579; 555656, 3701579; 555669, 3701602; 555686, 3701610; 555695, 3701598.

(C) 554768, 3699378; 554765, 3699345; 554761, 3699217; 554681, 3699179; 554608, 3699086; 554569, 3699029; 554501, 3699079; 554455, 3699103; 554488, 3699119; 554497, 3699142; 554543, 3699151; 554539, 3699185; 554571, 3699264; 554587, 3699280; 554622, 3699291; 554639, 3699320; 554667, 3699343; 554699, 3699341; 554719, 3699367; 554748, 3699380; 554768, 3699378.

(D) 554487, 3699017; 554487, 3698993; 554435, 3698991; 554392, 3698980; 554398, 3699012; 554405, 3699026; 554410, 3699056; 554427, 3699057; 554423, 3699035; 554458, 3699018; 554487, 3699017.

(E) 554195, 3698145; 554220, 3698101; 554258, 3698101; 554256, 3698043; 554224, 3698055; 554210, 3698079; 554193, 3698085; 554191, 3698097; 554195, 3698145.

(F) 554223, 3697539; 554247, 3697505; 554195, 3697448; 554171, 3697394; 554179, 3697365; 554152, 3697343; 554132, 3697360; 554123, 3697373; 554155, 3697405; 554167, 3697472; 554223, 3697539.

(G) 554070, 3697244; 554099, 3697254; 554134, 3697240; 554127, 3697220; 554096, 3697208; 554071, 3697229; 554070, 3697244.

(H) 553784, 3697256; 553807, 3697291; 553829, 3697279; 553849, 3697268; 553881, 3697270; 553911, 3697274; 553931, 3697267; 553979, 3697295; 553989, 3697296; 553980, 3697274; 553965, 3697264; 553963, 3697246; 553939, 3697239; 553914, 3697242; 553901, 3697230; 553881, 3697235; 553872, 3697251; 553848, 3697246; 553833, 3697254; 553829, 3697262; 553821, 3697262; 553799, 3697250; 553784, 3697256.

(I) 553928, 3697415; 553935, 3697425; 553952, 3697426; 553941, 3697416; 553940, 3697405; 553942, 3697385; 553927, 3697367; 553852, 3697391; 553833, 3697408; 553822, 3697403; 553766, 3697414; 553739, 3697424; 553735, 3697478; 553747, 3697483; 553764, 3697425; 553795, 3697420; 553820, 3697429; 553849, 3697415; 553880, 3697408; 553905, 3697395; 553921, 3697407; 553928, 3697415.

(J) 553538, 3697315; 553550, 3697308; 553572, 3697322; 553580, 3697314; 553556, 3697287; 553538, 3697302; 553538, 3697315.

(K) 555054, 3699844; 555015, 3699840; 555015, 3699840; 555006, 3699890; 555065, 3699975; 555086, 3700030; 555115, 3700032; 555114, 3700030; 555076, 3699953; 555038, 3699915; 555039, 3699861; 555054, 3699844.

(ii) Map of Unit 2a for Koster's springsnail and Roswell springsnail is provided at paragraph (5)(ii) of this entry.

* * * * *

(h) *Crustaceans.*

* * * * *

Noel's amphipod (*Gammarus desperatus*)

(1) Critical habitat units are depicted for Chaves County, New Mexico, on the maps below.

(2) The primary constituent element of critical habitat for Noel's amphipod is springs and spring-fed wetland systems that:

(i) Have permanent, flowing water with no or no more than low levels of pollutants;

(ii) Have slow to moderate water velocities;

(iii) Have substrates including limestone cobble and aquatic vegetation;

(iv) Have stable water levels with natural diurnal (daily) and seasonal variations;

(v) Consist of fresh to moderately saline water;

(vi) Have minimal sedimentation;

(vii) Vary in temperature between 50–68 °F (10–20 °C) with natural seasonal and diurnal variations slightly above and below that range; and

(viii) Provide abundant food, consisting of:

(A) Submergent vegetation and decaying organic matter;

(B) A surface film of algae, diatoms, bacteria, and fungi; and

(C) Microbial foods, such as algae and bacteria, associated with aquatic plants, algae, bacteria, and decaying organic material.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1: Sago/Bitter Creek Complex, Chaves County, New Mexico.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N):

(A) 553337, 3705095; 553357, 3705102; 553360, 3705067; 553371, 3705041; 553420, 3705010; 553433, 3704982; 553482, 3704987; 553499, 3704955; 553437, 3704946; 553424, 3704909; 553401, 3704883; 553340, 3704906; 553319, 3704879; 553266, 3704869; 553274, 3704816; 553240, 3704797; 553240, 3704623; 553306, 3704532; 553300, 3704419; 553280, 3704354; 553287, 3704287; 553338, 3704221; 553438, 3704145; 553459, 3704108; 553499, 3704091; 553533, 3704059; 553559, 3704024; 553588, 3704004; 553650, 3704024; 553655, 3704014; 553654, 3703981; 553699, 3703983; 553745, 3703960; 553775, 3703978; 553799, 3703979; 553828, 3704003; 553859, 3704016; 553871, 3704037; 553907, 3704053; 553938, 3704074; 553964, 3704078; 553983, 3704080; 553993, 3703978; 553939, 3703960; 553917, 3703914; 553903, 3703927; 553758, 3703909; 553710, 3703936; 553656, 3703932; 553567, 3703940; 553484, 3704010; 553426, 3704085; 553396, 3704109; 553357, 3704150; 553270, 3704273; 553271, 3704299; 553270, 3704344; 553255, 3704398; 553274, 3704444; 553254, 3704540; 553218, 3704577; 553197,

3704824; 553205, 3704843; 553246, 3704885; 553233, 3704911; 553238, 3704941; 553265, 3704950; 553294, 3704941; 553312, 3705045; 553337, 3705095.

(B) 553906, 3704450; 553915, 3704455; 553920, 3704452; 553917, 3704438; 553926, 3704432; 553935, 3704420; 553957, 3704404; 553965, 3704405; 553974, 3704406; 553985, 3704388; 553993, 3704387; 554019, 3704376; 554037, 3704362; 554045, 3704389; 554060, 3704406; 554083, 3704416; 554085, 3704429; 554110, 3704452; 554132, 3704457; 554121, 3704474; 554106, 3704494; 554102, 3704531; 554119, 3704531; 554135, 3704523; 554144, 3704510; 554157, 3704481; 554154, 3704460; 554174, 3704431; 554192, 3704393; 554210, 3704366; 554216, 3704346; 554190, 3704357; 554174, 3704365; 554166, 3704375; 554159, 3704395; 554146, 3704394; 554126, 3704391; 554117, 3704384; 554123, 3704364; 554119, 3704346; 554105, 3704337; 554091, 3704312; 554097, 3704289; 554094, 3704269; 554084, 3704261; 554059, 3704273; 554052, 3704260; 554034, 3704259; 554022, 3704248; 554005, 3704272; 554024, 3704293; 554040, 3704300; 554041, 3704321; 554016, 3704332; 554006, 3704317; 553974, 3704323; 553963, 3704324; 553963, 3704316; 553966, 3704314; 553961, 3704302; 553949, 3704302; 553936, 3704302; 553934, 3704311; 553946, 3704321; 553952, 3704323; 553946, 3704332; 553946, 3704353; 553958, 3704373; 553964, 3704381; 553958, 3704392; 553946, 3704391; 553938, 3704396; 553934, 3704394; 553930, 3704397; 553930, 3704409; 553924, 3704409; 553906, 3704413; 553902, 3704424; 553894, 3704419; 553885, 3704419; 553898, 3704448; 553906, 3704450.

(ii) *Note:* Map of Noel's Amphipod Critical Habitat Units 1 and 2a follows:

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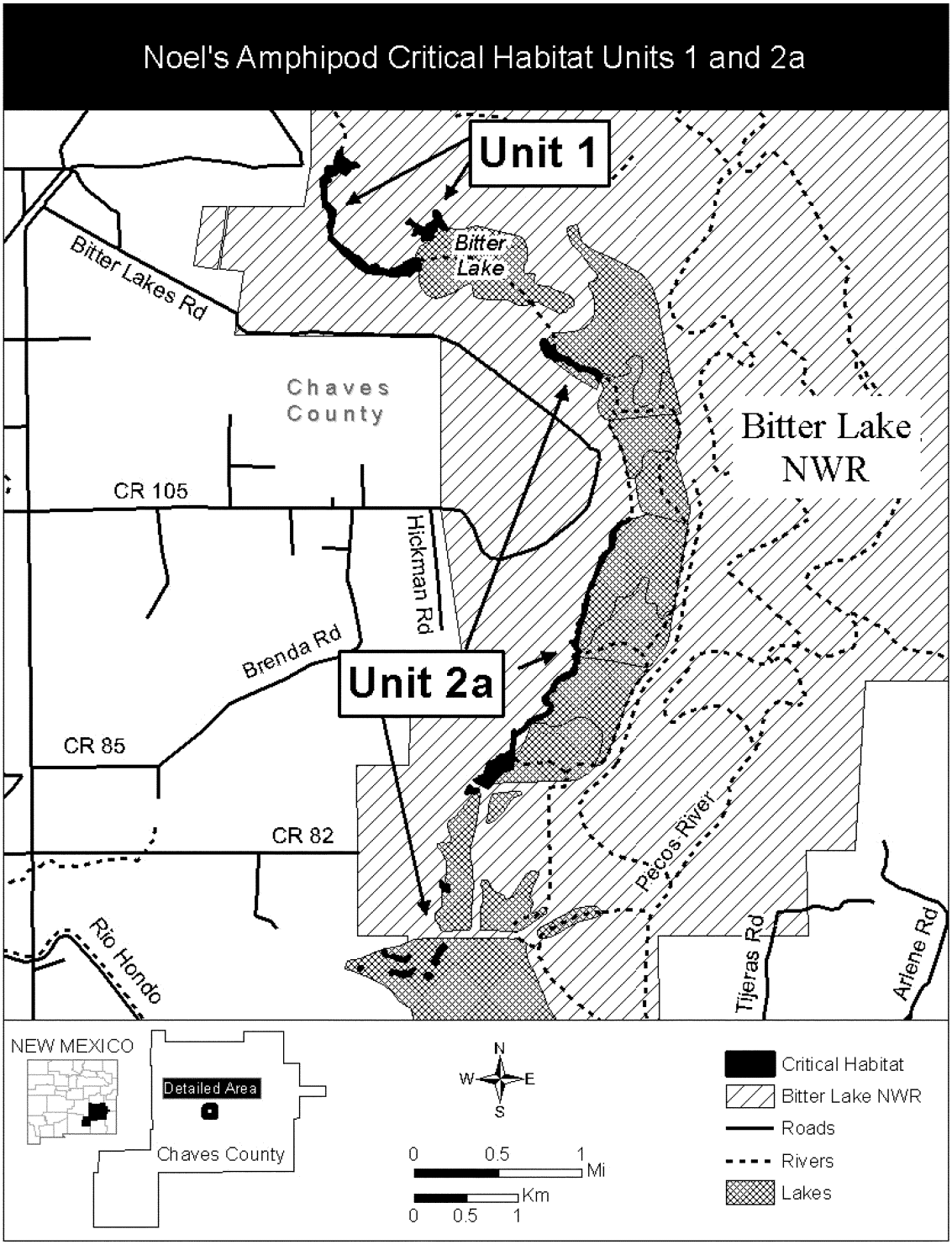


(6) Unit 2a: Springsnail/Amphipod Impoundment Complex, Chaves County, New Mexico.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N):

(A) 554982, 3703317; 555004, 3703315; 555011, 3703299; 555053, 3703215; 555079, 3703205; 555094, 3703168; 555171, 3703138; 555222, 3703093; 555259, 3703078; 555289, 3703055; 555338, 3703047; 555420, 3703024; 555458, 3702955; 555442, 3702940; 555422, 3702925; 555406, 3702974; 555330, 3703017; 555277, 3703025; 555229, 3703068; 555188, 3703090; 555151, 3703125; 555131, 3703116; 555075, 3703115; 555042, 3703144; 555014, 3703147; 554978, 3703231; 554964, 3703290; 554982, 3703317.

(B) 555695, 3701598; 555603, 3701536; 555568, 3701479; 555565, 3701460; 555559, 3701324; 555532, 3701296; 555502, 3701277; 555355, 3700892; 555356, 3700852; 555342, 3700778; 555333, 3700694; 555294, 3700533; 555271, 3700409; 555281, 3700322; 555273, 3700266; 555257, 3700265; 555238, 3700281; 555247, 3700304; 555268, 3700316; 555269, 3700343; 555221, 3700433; 555257,

3700433; 555263, 3700446; 555269, 3700498; 555260, 3700534; 555284, 3700550; 555285, 3700567; 555274, 3700604; 555288, 3700636; 555312, 3700666; 555322, 3700725; 555325, 3700767; 555345, 3700858; 555350, 3700891; 555355, 3700901; 555365, 3700958; 555379, 3700992; 555392, 3701014; 555436, 3701152; 555450, 3701200; 555450, 3701241; 555472, 3701247; 555480, 3701271; 555504, 3701300; 555520, 3701303; 555534, 3701340; 555529, 3701451; 555549, 3701492; 555589, 3701560; 555621, 3701579; 555656, 3701579; 555669, 3701602; 555686, 3701610; 555695, 3701598.

(C) 554768, 3699378; 554765, 3699345; 554761, 3699217; 554681, 3699179; 554608, 3699086; 554569, 3699029; 554501, 3699079; 554455, 3699103; 554488, 3699119; 554497, 3699142; 554543, 3699151; 554539, 3699185; 554571, 3699264; 554587, 3699280; 554622, 3699291; 554639, 3699320; 554667, 3699343; 554699, 3699341; 554719, 3699367; 554748, 3699380; 554768, 3699378.

(D) 554487, 3699017; 554487, 3698993; 554435, 3698991; 554392, 3698980; 554398, 3699012; 554405, 3699026; 554410, 3699056; 554427, 3699057; 554423, 3699035; 554458, 3699018; 554487, 3699017.

(E) 554195, 3698145; 554220, 3698101; 554258, 3698101; 554256, 3698043; 554224, 3698055; 554210, 3698079; 554193, 3698085; 554191, 3698097; 554195, 3698145.

(F) 554223, 3697539; 554247, 3697505; 554195, 3697448; 554171, 3697394; 554179, 3697365; 554152, 3697343; 554132, 3697360; 554123, 3697373; 554155, 3697405; 554167, 3697472; 554223, 3697539.

(G) 554070, 3697244; 554099, 3697254; 554134, 3697240; 554127, 3697220; 554096, 3697208; 554071, 3697229; 554070, 3697244.

(H) 553784, 3697256; 553807, 3697291; 553829, 3697279; 553849, 3697268; 553881, 3697270; 553911, 3697274; 553931, 3697267; 553979, 3697295; 553989, 3697296; 553980, 3697274; 553965, 3697264; 553963, 3697246; 553939, 3697239; 553914, 3697242; 553901, 3697230; 553881, 3697235; 553872, 3697251; 553848, 3697246; 553833, 3697254; 553829, 3697262; 553821, 3697262; 553799, 3697250; 553784, 3697256.

(I) 553928, 3697415; 553935, 3697425; 553952, 3697426; 553941, 3697416; 553940, 3697405; 553942, 3697385; 553927, 3697367; 553852, 3697391; 553833, 3697408; 553822, 3697403; 553766, 3697414; 553739, 3697424; 553735, 3697478; 553747, 3697483; 553764, 3697425; 553795, 3697420; 553820, 3697429; 553849, 3697415; 553880, 3697408; 553905, 3697395; 553921, 3697407; 553928, 3697415.

(J) 553538, 3697315; 553550, 3697308; 553572, 3697322; 553580, 3697314; 553556, 3697287; 553538, 3697302; 553538, 3697315.

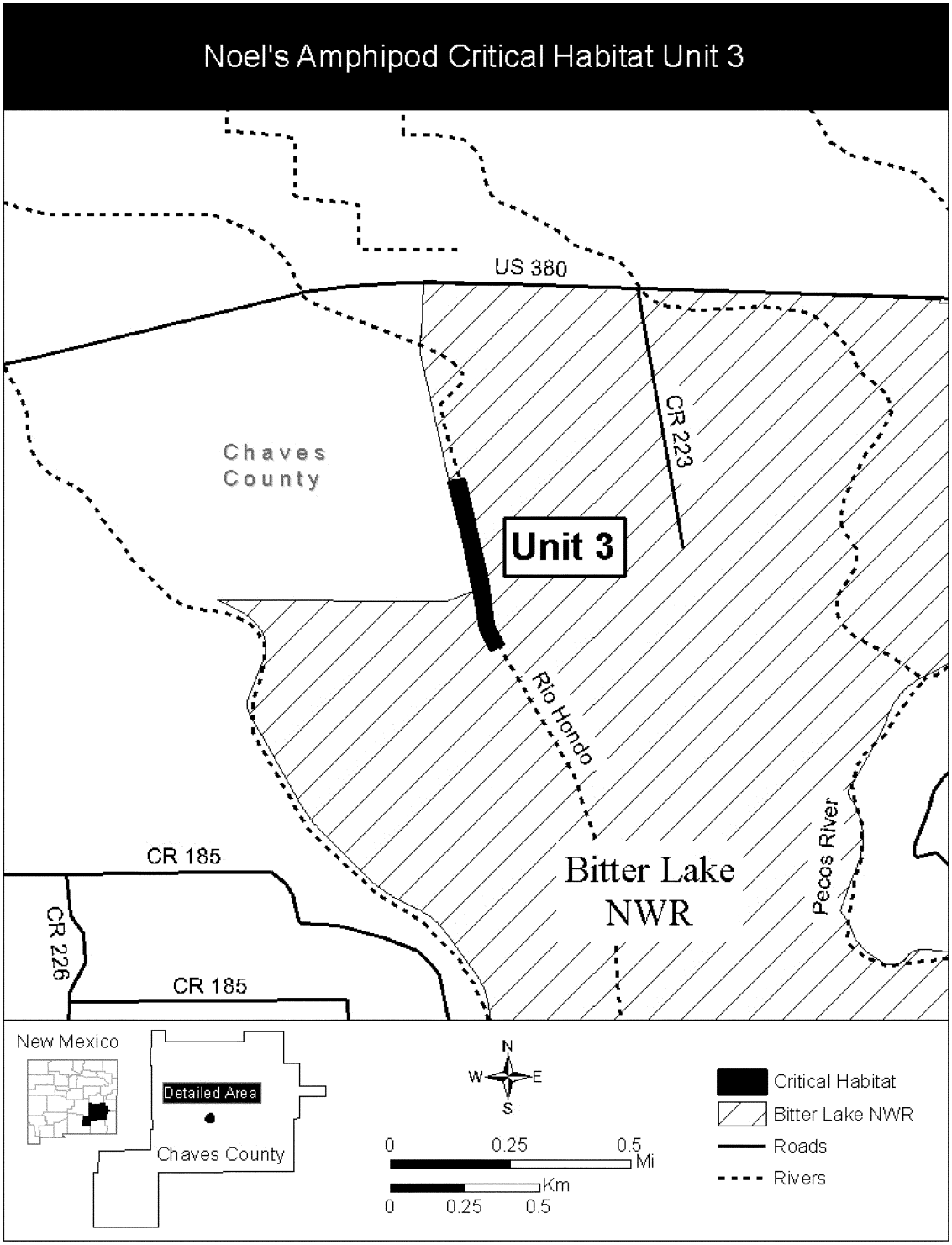
(K) 555054, 3699844; 555015, 3699840; 555015, 3699840; 555006, 3699890; 555065, 3699975; 555086, 3700030; 555115, 3700032; 555114, 3700030; 555076, 3699953; 555038, 3699915; 555039, 3699861; 555054, 3699844.

(ii) Map of Unit 2a for Noel's amphipod is provided at paragraph (5)(ii) of this entry.

(7) Unit 3: Rio Hondo, Chaves County, New Mexico.

(i) Land bounded by the following UTM Zone 13N, North American Datum of 1983 (NAD83) coordinates (E, N): 554121, 3694838; 554166, 3694847; 554200, 3694673; 554230, 3694507; 554247, 3694358; 554277, 3694294; 554243, 3694274; 554212, 3694343; 554196, 3694458; 554164, 3694649; 554121, 3694838.

(ii) *Note:* Map of Noel's Amphipod Critical Habitat Unit 3 follows:



* * * * *

Dated: May 19, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–13227 Filed 6–6–11; 8:45 am]

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FEDERAL REGISTER

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Part III

Commodity Futures Trading Commission

17 CFR Parts 1, 5, 7 *et al.*
Adaptation of Regulations to Incorporate Swaps; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 7, 8, 15, 18, 21, 36, 41, 140, 145, 155, and 166

RIN Number 3038–AD53

Adaptation of Regulations to Incorporate Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "DFA") established a comprehensive new statutory framework for swaps and security-based swaps. The Dodd-Frank Act repeals some sections of the Commodity Exchange Act ("CEA" or "Act"), amends others, and adds a number of new provisions. The DFA also requires the Commodity Futures Trading Commission ("CFTC" or "Commission") to promulgate a number of rules to implement the new framework. The Commission has proposed numerous rules to satisfy its obligations under the DFA. Because the Dodd-Frank Act makes so many changes to the existing statutory and regulatory frameworks, the proposed rules would make a number of conforming changes to the CFTC's regulations to integrate them more fully with the new statutory and regulatory framework ("Proposal").

DATES: Comments must be received on or before August 8, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD53, by any of the following methods:

- *The agency's Web site, at: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to http://www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Peter A. Kals, Attorney-Advisor, 202–418–5466, *pkals@cftc.gov,* or Elizabeth Miller, Attorney-Advisor, 202–418–5450, *emiller@cftc.gov,* Division of Clearing and Intermediary Oversight; David E. Aron, Counsel, at 202–418–6621, *daron@cftc.gov,* Office of General Counsel; Nadia Zakir, Attorney-Advisor, 202–418–5720, *nzakir@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[2] Title VII of the Dodd-Frank Act[3] ("Title VII") amended the CEA[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted, among other reasons, to reduce risk, increase transparency, and promote market integrity within the financial system, including by: (1) Providing for the registration and comprehensive regulation of swap dealers ("SDs"), security-based swap dealers, major swap participants ("MSPs"), and major security-based swap participants; (2) imposing clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the rulemaking and enforcement authorities of the Commissions with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

[1] 17 CFR 145.9. Commission regulations referred to herein are found on the Commission's website.

[2] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.* (2006).

Title VII added to the CEA two new categories of Commission registrant (*i.e.,* SDs [5] and MSPs [6]) and provided a definition for associated persons of the foregoing.[7] Title VII also added to the CEA compliance obligations for SDs and MSPs and revised the definitional scope of each existing intermediary registrant category,[8] with the exception of retail foreign exchange dealers ("RFEDs"), to include intermediation activity involving swaps.

To apply its regulatory regime to the swap activity of intermediaries, the Commission must make a number of changes to its regulations to conform them to the Dodd-Frank Act. These changes primarily affect part 1 of the Commission's rules, but also affect parts 5, 7, 8, 15, 18, 21, 36, 41, 140, 145, 155, and 166. To the extent the DFA required the Commission to promulgate rules to address certain specific DFA sections, the Commission has proposed or is in the process of proposing such rules separately.

Today's Proposal contains amendments of three different types: ministerial, accommodating, and substantive. Many of the proposed amendments are purely ministerial—for instance, several proposed changes would update definitions to conform them to the CEA as amended by the Dodd-Frank Act; add to the Commission's regulations new terms created by the Dodd-Frank Act; remove all regulations and references pertaining to derivatives transaction execution facilities ("DTEFs"), a category of exchange which was eliminated by the DFA; correct various statutory cross-references to the CEA in the regulations; and remove regulations in whole or in part that were rendered moot by the Commodity Futures Modernization Act of 2000 ("CFMA").

The proposed accommodating amendments are essential to the implementation of the DFA in that they propose to add swaps, swap markets, and swap entities to numerous definitions and regulations, but are more than ministerial because they require some judgment in drafting. Accommodating amendments would include, among other things, amending numerous definitions in regulation 1.3 to reference or include swaps; creating new definitions as necessary in regulation 1.3; amending recordkeeping requirements to include information on swap transactions; adding references to swaps, swap execution facilities ("SEFs") and derivatives clearing organizations ("DCOs") to various part 1 regulations; and amending parts 15, 18, 21, and 36 to implement the DFA's grandfathering and phase-out of exempt boards of trade and exempt commercial markets.

The remaining proposed substantive amendments are changes that would align requirements or procedures across futures and swap markets. They consist of proposed amendments to regulations 1.31 and 1.35 that would harmonize current part 1 recordkeeping requirements with those applicable to SDs and MSPs under proposed part 23 regulations and harmonize certain procedures applicable to swaps with those applicable to futures.

To aid the public in understanding the numerous changes to different parts of the CFTC's regulations explained in the Proposal, the Commission will also publish on its Web site a "redline" of the affected regulations which will clearly reflect the proposed amendments and deletions.[9]

II. Proposed Regulations

A. Part 1

1. Regulation 1.3: Definitions

a. General Changes

The Commission proposes to revise regulation 1.3 so that its definitions, which are used throughout the regulations, incorporate relevant provisions of the DFA. For instance, proposed regulation 1.3 updates current definitions to conform them to the Dodd-Frank Act's amendments of the same terms in the CEA's definitions section,[10] and also includes definitions specifically added by the Dodd-Frank Act to the CEA. This is the case for many of the definitions in proposed regulation 1.3, including "associated person of a swap dealer or major swap participant," "commodity pool operator," "commodity trading advisor," "futures commission merchant," "floor broker," "floor trader," "swap data repository," and "swap execution facility." [11] Additionally, the Commission is proposing to revise the definition of "self-regulatory organization" ("SRO") to include SEFs, a new category of regulated markets under the DFA, and to make clear that DCOs are SROs.[12]

b. Amended and New Definitions

The Commission also proposes (1) to simplify or clarify certain existing regulation 1.3 definitions, and (2) to add several new definitions to regulation 1.3, pursuant to amendments to the CEA by the Dodd-Frank Act, existing regulations, and other amendments in the Proposal.[13]

The term "contract market," for instance, is not defined under the CEA, and is currently defined under regulation 1.3(h) as "a board of trade designated by the Commission as a contract market under the Commodity Exchange Act or in accordance with the provisions of part 33 of this chapter." In certain provisions throughout the Commission's regulations, contract markets are also referred to as "designated contract markets." Because both terms are used interchangeably within the regulations, the Commission is proposing to revise the definition to mean contract market and designated contract market ("DCM"). Proposed

[5] DFA section 721(a)(21), adding CEA section 1a(49), codified at 7 U.S.C. 1a(49).

[6] DFA section 721(a)(16), adding CEA section 1a(33), codified at 7 U.S.C. 1a(33).

[7] DFA section 721(a)(15), adding CEA section 1a(4), codified at 7 U.S.C. 1a(4).

[8] Existing intermediary registrant categories include futures commission merchants ("FCMs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), introducing brokers ("IBs"), floor brokers ("FBs") and floor traders ("FTs").

[9] Furthermore, while there are many outstanding Notices of Proposed Rulemaking ("NPRMs") published by the CFTC, today's Proposal does not reflect those separately proposed amendments, most of which are not yet final. For example, the Proposal amends regulation 1.3(z) (definition of "bona fide hedging transactions and positions") to remove certain cross-references, but the Proposal does not also show other amendments to that definition proposed earlier this year in a separate release. *See* Position Limits for Derivatives, 76 FR 4752, Jan. 26, 2011. All NPRMs are available on the Commission's Web site for the public to review and provide comment. For a list of all rulemaking proposals related to the Dodd-Frank Act, please visit *http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankProposedRules/index.htm.*

[10] CEA section 1a, 7 U.S.C. 1a.

[11] The DFA amended the definition of "commodity pool operator" in CEA section 1a to add swaps to those contracts for which a CPO solicits investment. DFA section 721(a)(5). In addition to amending the definition of "commodity pool operator" in proposed regulation 1.3 to accommodate that revision, the Commission proposes to add equivalent language to the definition of "commodity trading advisor" in regulation 1.3.

[12] Currently, some individual rules specifically include DCO in the definition of SRO, but they are not included in the general definition of SRO in regulation 1.3.

[13] The Commission realizes that several earlier published releases have also proposed to add definitions to regulation 1.3, and that these amendments may overlap, *e.g.,* more than one definition was proposed for regulation 1.3(zz). *See* Agricultural Commodity Definition, 75 FR 65586, Oct. 26, 2010; Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732, Oct. 18, 2010. However, as each rule proposal is published as a final rulemaking, the Commission will ensure that the lettering of paragraphs within regulation 1.3 for newly added definitions is correct. Therefore, the Commission requests that the public review the new definitions proposed today for their content only and ignore any inconsistencies in lettering between the Proposal and prior NPRMs.

regulation 1.3(h) will contain one definition identified by the title "Contract market; designated contract market." The current definition also erroneously cross-references part 33 as the DCM provisions of the Commission's regulations. The proposed definition would change that cross-reference to part 38 of the Commission's regulations.

The Commission proposes a similar clarification regarding the definition of "customer." The Proposal simplifies the definition of "customer" by combining two existing definitions, "Customer; commodity customer" in regulation 1.3(k) and "Option customer" in regulation 1.3(jj), and adding swaps.[14] Therefore, the "customer" definition proposed herein would include swap customers, commodity customers, and option customers, and refer to them all with the single term, "customer." Furthermore, the Commission proposes to revise all references to "commodity customer" and "option customer" throughout the Commission's regulations, but particularly in part 1, to simply refer to "customer."[15] These revisions have retained references to requirements specific to certain contracts.[16]

The Commission proposes to define the term "confirmation" to reflect its differing use in various regulations depending on whether a transaction is executed by an FCM, IB or CTA on the one hand, or by a SD or MSP on the other hand. In the first case, the registrant is acting as an agent. In the second it is acting as a principal.[17]

The Commission also proposes to revise the "Member of a contract market" definition currently found at regulation 1.3(q) and to add to regulation 1.3 a definition of the term "Registered entity," currently provided in CEA section 1a(40), as revised by the Dodd-Frank Act. The definition of "registered entity" proposed in regulation 1.3 is identical to its CEA counterpart and would include DCOs, DCMs, SEFs, swap data repositories ("SDRs") and certain electronic trading facilities. To correspond with this new definition, the Commission also proposes to replace the current "Member of a contract market" definition with a new definition of "Member," which would be nearly identical to the "Member of a registered entity" definition provided in CEA section 1a(34), also as revised by the Dodd-Frank Act.[18] Therefore, the proposed "Member" definition would be broadened to accommodate newly established SEFs, and it would include those "owning or holding membership in, or admitted to membership representation on, the registered entity; or having trading privileges on the registered entity."

The Commission proposes to add a definition of the term "order." This term has not previously been defined, although it is used in several of the regulations, *e.g.,* 1.35, 155.3, and 155.4. In light of this and with the addition of new categories of registrants (SDs and MSPs) who act as principals rather than agents, clarification of this term is appropriate. The definition would provide that an order is "an instruction or authorization provided by a customer to a futures commission merchant, introducing broker, or commodity trading advisor regarding trading in a commodity interest on behalf of the customer."

Because amendments to regulation 1.31 also proposed herein incorporate the term "prudential regulator," as added to the CEA by the Dodd-Frank Act, the Commission proposes to add it to regulation 1.3.[19] Pursuant to proposed regulation 1.31, records of swap transactions must be presented, upon request, to "any applicable prudential regulator as that term is defined in section 1a(39) of the Act." The proposed definition of "prudential regulator" in regulation 1.3 is coextensive with the definition in section 1a(39) of the Act and lists the various prudential regulators. Pursuant to the definition in section 1a(39) of the Act, determining the "applicable" prudential regulator depends upon what type of entity the SD or MSP is and which regulator oversees that SD or MSP.[20] For example, if a SD is a national bank, it is overseen by the Office of the Comptroller of the Currency, and that agency would be the "applicable prudential regulator" for the purposes of proposed regulation 1.31.

The Commission proposes to add the term "registrant" to regulation 1.3 so that certain regulations in part 1 can refer to various intermediaries (*e.g.,* FCMs, IBs, CPOs), their employees (associated persons), and other registrants (MSPs). As discussed above, the Commission also has proposed to add the definition of "registered entity" from CEA section 1a, which refers to DCOs, DCMs, SEFs, SDRs, and other entities, to regulation 1.3. Because the DFA created a definition of and several proposed part 1 regulations refer to "associated persons of swap dealers or major swap participants," the Commission proposes to add that term to regulation 1.3 as well.

The Commission also proposes adding the term "retail forex customer" to regulation 1.3 because it appears in several regulations in part 1 and currently is only defined in part 5. The proposed definition is identical in all material respects to the definition of this term as it currently appears in regulation 5.1(k).[21]

Proposed regulation 1.3 also changes certain definitions so that the Commission's regulations properly refer to both futures and swaps. Additionally, for ease of reference, proposed regulation 1.3 would simply adopt several terms defined under the CEA, including "electronic trading facility," "organized exchange," and "trading facility."

c. Regulation 1.3(ll): Physical

Regulation 1.3(ll) defines the term "physical" as "any good, article, service, right or interest upon which a commodity option may be traded in accordance with the Act and these regulations,"[22] which is similar to the "commodity" definition in regulation 1.3(e).[23] Regulation 1.3(e) defines the

[14] The "General Regulations and Derivatives Clearing Organizations" **Federal Register** release proposed to amend regulation 1.3(k) by adding "swap customer," but there is nothing unique about that term requiring it to be separately defined. General Regulations and Derivatives Clearing Organizations, 75 FR 77576, Dec. 13, 2010.

[15] The Commission proposes to remove references to commodity customers and option customers, replacing them with references to simply "customer," in the following regulations: 17 CFR 1.3, 1.20–1.24, 1.26, 1.27, 1.30, 1.32–1.34, 1.35–1.37, 1.46, 1.57, 1.59, 155.3, 155.4, and 166.5.

[16] For example, proposed regulation 1.33 (Monthly and confirmation statements) requires an FCM to document a customer's positions in futures contracts differently from its option or swap positions. Proposed regulation 1.33 preserves these distinctions, even though it refers only to "customers" as opposed to "commodity customers," "option customers," and "swap customers."

[17] A single entity could be registered in more than one capacity, for example, as both a SD and a CTA. Which rules were applicable would depend on the capacity in which it was performing a particular function.

[18] In accordance with the removal of DTEF references from many other Commission regulations, the proposed "Member" definition would not include DTEF references currently in the definition of "Member of a registered entity" found in CEA section 1a(34). *See* 7 U.S.C. 1a(34).

[19] *See infra* Part II.A.3.

[20] 7 U.S.C. 1a(39), as amended by DFA section 721(a)(17).

[21] 17 CFR 5.1(k) currently defines "retail forex customer" as "a person, other than an eligible contract participant as defined in section 1a(12) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act." The Proposal would amend this definition in part 5 only to reflect the renumbering of section 1a of the Act by the DFA, and add an identically amended definition to regulation 1.3. *See infra* Part II.G.2.

[22] 17 CFR 1.3(ll).

[23] 17 CFR 1.3(e).

term "commodity," in relevant part, as "all * * * goods and articles * * * and all services, rights and interests in which contracts for future delivery are presently or in the future dealt in." [24] The word "physical" is used in 45 Commission regulations other than regulation 1.3(ll).[25] The introductory text of regulation 1.3 states that "[t]he following terms, as used in the Commodity Exchange Act, or in the rules and regulations in this chapter, shall have the meanings hereby assigned to them, *unless the context otherwise requires*." [26]

The "physical" definition was first added to regulation 1.3 in 1983 to enable trading, on DCMs, in options to buy or sell an underlying commodity and has not been substantively amended.[27] In the **Federal Register** release proposing the addition of regulation 1.3(ll), the Commission stated that "[t]he proposed definition is intended to be coextensive with the Commission's jurisdiction with respect to commodity options." [28] At the time of that proposal in 1982, cash-settled futures on non-physical commodities had just been introduced in the form of the Chicago Mercantile Exchange's Eurodollar futures. In that context, in proposing rules to permit exchange-traded options on underlying commodities, it made sense to name such options based on physical commodities, which constituted the vast majority of commodities covered by then-existing futures contracts.

At present, however, options may be traded on both physically deliverable and non-physically deliverable commodities, such as interest rates and temperatures. Using the term "physical" to refer to an option on both physically deliverable commodities and non-physically deliverable commodities may be confusing on its face.[29] Also, the requirement in the forward exclusion from the "swap" definition contained in CEA section 1a(47)(B)(ii), as amended by Dodd-Frank section 721(a)(21), that a sale of a non-financial commodity or security for deferred shipment or delivery "is intended to be physically settled" would be meaningless if "physical" included non-physical. As noted above, the introductory text of regulation 1.3 states that its defined terms have the meanings assigned to them in regulation 1.3, unless the context otherwise requires.

The Commission requests comment on whether any changes to the "physical" definition are necessary or warranted. Should the Commission revise the definition of "physical" to limit it to its common sense meaning? Should the Commission remove it on the theory that the meaning of "physical" is self-evident? Should the Commission address such issues, if at all, in other rulemakings where they arise more directly, such as with respect to emission-related commodities as they relate to the forward exclusion from the swap definition? [30] If so, should the Commission replace the term "physical" with some other more suitable term in the relevant regulations referencing current regulation 1.3(ll)? If so, what should the new term be? Should the Commission take no action, in reliance on the ability of interested parties to interpret the "unless the context otherwise requires" language of regulation 1.3, or on some other basis? [31]

d. Regulation 1.3(yy): Commodity Interest

The Commission proposes to add swaps on all commodities within the CFTC's jurisdiction to the definition of "commodity interest" in regulation 1.3(yy).[32] Commodity interest currently is defined as: "(1) Any contract for the purchase or sale of a commodity for future delivery; (2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act; and (3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act." The term "commodity interest" is cross-referenced by 33 other Commission regulations and appendices to parts of Commission regulations.[33] Generally, the term is meant to encompass all agreements, contracts and transactions within the Commission's jurisdiction, though not all such agreements, contracts and transactions are expressly set forth therein.[34]

[24] Regulation 1.3(e) tracks 7 U.S.C. 1a(9), as renumbered and amended by Dodd-Frank Sections 721(a)(1) and (4), respectively.

[25] *See* 17 CFR 1.3(z)(1), 1.3(kk), 1.17(c)(iii), 1.17(c)(5)(ii)(A), 1.17(c)(5)(xi), 1.17(j)(1), 1.31(b)(3)(iii)(B), 1.33(a)(2)(i), 1.33(a)(2)(ii), 1.33(b)(2)(iv), 1.33(b)(3), 1.34(b), 1.35(b)(2)(iii), 1.35(b)(3)(iii), 1.35(d)(1), 1.35(e), 1.39(a), 1.39(a)(3), 1.44, 1.44(b), 1.46(a)(iii), 1.46(a)(iv), 4.23(a)(1), 4.23(b)(1), 4.33(b)(1), 5.13(b)(3), 10.68(b)(1)(i), 15.00(p)(1)(ii), 16.00(a), 16.01(a), 16.01(b), 18.04(b)(3), 18.04(b)(3)(ii), 18.04(b)(6), 18.04(b)(6)(ii), 31.8(a)(1), 31.8(a)(2)(iii), 31.8(a)(2)(iv), 31.9(a), 31.9(a)(1), 32.12(a), 32.13(a), 32.13(e)(2), 33.4, 33.4(a)(4), 33.4(a)(5)(iv), 33.4(a)(5)(iv)(A), 33.4(a)(5)(iv)(B), 33.4(a)(5)(iv)(C), 33.4(a)(5)(iv), 33.4(b)(1)(iii), 33.4(d)(3), 33.7(b), 33.7(b)(1), 33.7(b)(2)(i), 33.7(b)(5), 33.7(b)(6), 33.7(b)(7)(ii), 33.7(b)(7)(iii), 33.7(b)(7)(iv), 33.7(b)(7)(v), and 33.7(b)(7)(x); 17 CFR pt. 36 app. A (paragraph 3 under PRICE LINKAGE, (c)(3)(ii) under CORE PRINCIPLE IV OF SECTION 2(h)(7)(C)—POSITION LIMITATIONS OR ACCOUNTABILITY, (c) under TRADING PROCEDURES, (c) under FAIR AND EQUITABLE TRADING, (b)(4) under POSITION LIMITATIONS OR ACCOUNTABILITY); 17 CFR 40.3(a)(4)(ii); 17 CFR pt. 40 app. A Guideline No. 1(a),(c)(2)(ii), and (c)(2)(ii)(B); 17 CFR 41.25(c), 41.25(g)(6), 145.7(j), 147.3(b)(7)(vi), 149.103, 149.150(b)(2), 149.150(d)(1), 150.3(a)(4)(i)(A), 150.5(b)(1), 150.5(c)(1), and 160.30; 17 CFR pt. 160 app. B Sample Clause A–7; 17 CFR 190.01(x)(1), 190.01(x)(2), 190.01(kk)(3), 190.01(kk)(4), 190.01(kk)(5), 190.01(ll), 190.02(f)(1), 190.05(a)(1), 190.05(b)(1), 190.05(b)(1)(iii), 190.05(c)(3), 190.07(e)(2)(i), 190.07(e)(2)(ii), 190.07(e)(2)(ii)(A), and 190.07(e)(2)(ii)(B); 17 CFR pt. 190 app. A, Form 1, paragraph 4 and Form 4 (Proof of Claim), paragraphs (c), (d) and (e).

[26] 17 CFR 1.3 (emphasis added).

[27] *See* Domestic Exchange-Traded Commodity Options; Expansion of Pilot Program To Include Options on Physicals, 47 FR 56996, Dec. 22, 1982 and 48 FR 12519, Mar. 25, 1983.

[28] Domestic Exchange-Traded Commodity Options; Expansion of Pilot Program Provisions, 47 FR 28401, June 30, 1982.

[29] Moreover, the Commission has recently proposed a rewrite of its options regulations in parts 32 and 33. References to options on a physical would be removed from part 33, which will apply only to DCM-traded options on futures. Options on physicals would be permitted to transact under revised part 32, which permits all options that are swaps under the Dodd-Frank swap definition to transact subject to the same rules applicable to any other swap. *See* Commodity Options and Agricultural Swaps, 76 FR 6095, Feb. 3, 2011.

[30] The Commission received several comment letters regarding environmental commodity issues in response to the advance notice of proposed rulemaking regarding Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 FR 51429, Aug. 20, 2010. *See* Letter from Kyle Danish, Van Ness Feldman, P.C., Counsel to the Coalition for Emission Reduction Projects (*available at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26164&SearchText=emission%20reduction*); Letter from Thomas Huetteman, Chairman, Jeffery C. Fort, Chair, Market Oversight Committee, and Jeremy D. Weinstein, Member, Environmental Markets Association (*available at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26166&SearchText=ema*); Letter from R. Michael Sweeney, Jr., Mark W. Menezes, and David T. McIndoe, Hunton & Williams, LLP, on behalf of the Working Group of Commercial Energy Firms (*available at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26219&SearchText=working%20group*).

[31] In a number of cases (*e.g.,* the reference to "physical safeguards" in Regulation 160.30 (Procedures to safeguard customer records and information); and the reference to "provide physical access to handicapped persons" in Regulation 149.150 (Program accessibility: Existing facilities)), the context will make it obvious that the term "physical" is meant to have its plain meaning.

[32] 17 CFR 1.3(yy).

[33] *See* 17 CFR 1.12, 1.56, 1.59, 3.10, 3.12, 3.21, 4.6, 4.7, 4.10, 4.12– 4.14, 4.22–4.25, 4.30–4.34, 4.36, 4.41, 30.3, 160.3–160.5, and 166.1–166.3; 17 CFR pt. 3 app. B, 17 CFR pt. 4 app. A, and 17 CFR pt. 190 app. B.

[34] For example, the term "contract for the purchase or sale of a commodity for future delivery" in current regulation 1.3(yy)(1) encompasses options on futures and security futures products. Similarly, the term "swaps" if added to proposed regulation 1.3(yy) would include mixed swaps. Of course, the impact of the scope of proposed regulation 1.3(yy) is only as extensive as the other regulations referencing it.

The Dodd-Frank Act adds a definition of "swap" to the CEA.[35] DFA section 712(d) requires the Commission to further define the term "swap" jointly with the Securities and Exchange Commission.[36] The Commission is proposing to add "swap" to the "commodity interest" definition so that the regulations cross-referencing it will apply to swaps.

2. Regulation 1.4: Use of Electronic Signatures

The Commission proposes to revise regulation 1.4[37] to extend the benefit of electronic signatures and other electronic actions to SDs and MSPs. Section 731 of the Dodd-Frank Act amends the CEA by adding new sections 4s(i)(1), requiring SDs and MSPs to "conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps,"[38] and 4s(i)(2), requiring the Commission to adopt rules "governing documentation standards for swap dealers and major swap participants."[39]

Pursuant to the foregoing authority, the Commission previously proposed new regulation 23.501(a)(1), which would require "[e]ach swap dealer and major swap participant entering into a swap transaction with a counterparty that is a swap dealer or major swap participant [to] execute a confirmation for the swap transaction," according to a specified schedule.[40] Also pursuant to the foregoing authority, the Commission has proposed new regulation 23.501(a)(2), which would require "[e]ach swap dealer and major swap participant entering into a swap transaction with a counterparty that is not a swap dealer or a major swap participant [to] send an acknowledgment of such swap transaction," according to a specified schedule.[41] Proposed regulation 23.500(a) would define such an "acknowledgment" as "a written or electronic record of all of the terms of a swap signed and sent by one counterparty to the other."[42] In issuing the proposed confirmation and acknowledgment rules cited above, the Commission explained that "[w]hen one party acknowledges the terms of a swap and its counterparty verifies it, the result is the issuance of a confirmation."[43]

Regulation 1.4 currently provides that an FCM, IB, CPO and CTA receiving an electronically signed document is in compliance with Commission regulations requiring signed documents, provided that such entity generally accepts electronic signatures.[44] The rationale for allowing the existing entities listed in regulation 1.4 to use electronic signatures (*i.e.,* "[a]s part of [the Commission's] ongoing efforts to facilitate the use of electronic technology and media")[45] applies equally to SDs and MSPs. Therefore, the Commission proposes to add SDs and MSPs to the list of entities covered by regulation 1.4 and to amend its structure to account for the provisions of the Commission's proposed confirmation and acknowledgement obligations discussed above.[46]

3. Regulation 1.31: Books and Records; Keeping and Inspection

In recent years, the phrase "books and records" has evolved with respect to the varying formats used to communicate and store information.[47] The Federal Rules of Civil Procedure have been revised to reflect this evolution by requiring producing parties to produce electronically stored information as specified in the request, but if not so specified, then as they are kept in the normal course of business or in a reasonably usable form.[48] Similarly, the Commission's own data delivery standards, which accompany the Commission's requests for production, indicate a preference for requested electronic information to be produced in native file format. The Commission's delivery standards provide technical instructions to producers designed to enable the Commission to receive such information in a machine-readable format that is compatible with the technology used by the Commission.

Recognizing that storage formats vary across different types of electronically stored information and to be consistent with current Commission practice and the Federal Rules of Civil Procedure, the proposed changes to regulations 1.31(a)(1), (a)(2), and (b) would require that: (1) All books and records required to be kept by the Act or by the Commission's regulations be kept in their original (for paper records) or native file format (for electronic records); and (2) production of such records be made in a form specified by the Commission. In addition, as provided in the existing regulation, books and records may continue to be stored on electronic storage media, provided, however, that for electronic records, the storage media must preserve the native file format of the electronic records.

Keeping electronic records in their native file format and producing them in a format designated by the Commission should not create any unreasonable burdens on persons required to maintain records under the Act and Commission regulations in light of Federal Rule of Civil Procedure 34(b), which would apply to such persons—and all other persons in possession of investigatory information—upon the filing of an enforcement action in Federal district court. Rule 34(b) permits the requesting party to designate the form or forms in which it wants electronically stored information produced in order to facilitate its usability. This is recognition that "the form of production is more important to the exchange of electronically stored information than of hard-copy materials."[49]

The Commission also proposes amendments to regulation 1.31 to incorporate two books and records obligations that proposed regulation 23.203(b) applies to SDs and MSPs. Proposed regulation 23.203(b) would require SDs and MSPs to (1) keep

[35] DFA section 721(a)(47); codified at 7 U.S.C. 1a(47).

[36] The Commissions have not yet proposed a further definition of the term "swap."

[37] 17 CFR 1.4.

[38] 7 U.S.C. 6s(i)(1).

[39] 7 U.S.C. 6s(i)(2).

[40] Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, Dec. 28, 2010.

[41] *Id.*

[42] *Id.*

[43] 75 FR at 81522.

[44] 17 CFR 1.4. The regulation also requires that the signatures in question comply with applicable Federal laws and Commission regulations, and requires the relevant entity to employ reasonable safeguards regarding the use of electronic signatures, including safeguards against alteration of the record of the electronic signature. *Id.*

[45] Use of Electronic Signatures by Customers, Participants and Clients of Registrants, 64 FR 47151, Aug. 30, 1999.

[46] This includes proposing a change to the title of regulation 1.4 to reflect these changes. Proposed regulation 1.4 is entitled "Use of electronic signatures, acknowledgments and verifications."

[47] U.S. Commodity Futures Trading Commission, Division of Market Oversight, Advisory for Futures Commission Merchants, Introducing Brokers, and Members of a Contract Market over Compliance with Recordkeeping Requirements, Feb. 5, 2009 (*http://www.cftc.gov/ucm/groups/public/@industryoversight/documents/file/recordkeepingdmoadvisory0209.pdf*) [hereinafter Recordkeeping Advisory].

[48] Fed. R. Civ. P. 34(b)(2)(E); Fed. R. Civ. P. 34, advisory committee note, 2006 amendment ("Rule 34(b) provides that a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the discovery request. The production of electronically stored information should be subject to comparable requirements to protect against deliberate or inadvertent production in ways that raise unnecessary obstacles for the requesting party").

[49] Fed. R. Civ. P. 34, advisory committee note, 2006 amendment.

records of swap or related cash or forward transactions until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of five years after such date; and (2) make such records available for inspection not only by the Commission and the United States Department of Justice, but also to any applicable prudential regulator, as that term is defined in section 1a(39) of the Act, or, in connection with security-based swap agreements described in section 1a(47)(A)(v) of the Act, the United States Securities and Exchange Commission. By contrast, existing regulation 1.31, which pertains to "*all* books and records required to be kept by the Act," requires that records be kept for five years and that they be made available only to the Commission and the Department of Justice.[50] The Proposal would add to regulation 1.31 the special requirements for swaps and cash related transactions in proposed regulation 23.203(b).

The Commission solicits comments on the potential costs and effects of the proposed new requirement that all books and records be maintained in their original form (for paper) and their native file format (for electronic records) as provided in the proposed rule. Comment also is requested regarding whether the retention period for any communication medium (*e.g.,* oral communications) should be shorter than the retention period applicable to other required records. In this regard, the Commission requests that commenters specify what the proposed retention period should be and why.

4. Regulation 1.33: Monthly and Confirmation Statements

Regulation 1.33 requires FCMs to maintain certain records and to regularly furnish monthly and confirmation statements to customers regarding commodity futures and option transactions they have entered into on behalf of customers. The DFA amended the definition of FCM in section 1a of the CEA to authorize an FCM to solicit or accept orders for swaps in addition to commodity futures and option transactions.[51] Therefore, the Commission proposes adding requirements for monthly and confirmation statements applicable to swaps.

Proposed regulation 1.33(a)(3) describes what information on swap positions an FCM must provide in monthly statements to its customers. Proposed regulation 1.33(b)(2) would extend the requirement that an FCM furnish confirmation statements to customers to swaps executed on a customer's behalf and describes what information such a confirmation statement must contain. In addition, the Commission proposes to amend regulation 1.33 to reflect proposed changes to the definitions of the terms "commodity interest," "customer," and "open contract" in regulation 1.3.

5. Regulation 1.35: Records of Cash Commodity, Futures and Option Transactions

The Commission proposes to amend regulation 1.35 in several respects. First, the Commission proposes to revise paragraph (a) such that this regulation's recordkeeping obligations would extend to trades executed by FCMs and IBs on SEFs. Those obligations currently apply only to trades executed on DCMs. Similarly, the proposed amendments would extend all of the regulation 1.35 recordkeeping obligations currently applicable to members of DCMs to include "members," as that term is proposed to be defined in proposed regulation 1.3, of SEFs.

Second, the proposed revisions replace the terms "commodity futures transactions," "retail forex exchange transactions," and "commodity option transactions" with the term "commodity interests." According to the Commission's proposed definition of "commodity interest" in regulation 1.3, "commodity interest" includes all of the aforementioned transactions as well as swaps. Thus, the Commission proposes that regulation 1.35's recordkeeping obligations for transactions in futures, commodity options, and retail forex exchange transactions also apply to swaps.[52] Pursuant to the Dodd-Frank Act, DCMs are permitted to list swaps, and FCMs and IBs are permitted to execute swaps on behalf of customers.[53]

In relevant part, existing regulation 1.35 requires FCMs, IBs, and DCM members to "keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to [their] business of dealing in commodity futures, commodity options and cash commodities," subject to the requirements of regulation 1.31. Specifically included among the records to be retained under regulation 1.35 are "all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda" that have been prepared in the course of an FCM's, an IB's, or a DCM member's business of dealing in commodity futures, commodity options, and cash commodities.

On February 5, 2009, the Commission's Division of Market Oversight ("DMO") issued an advisory stating that "[t]he Commission's recordkeeping regulations, by their terms, do not distinguish between whatever medium is used to record the information covered by the regulations, including emails, instant messages, and any other form of communication created or transmitted electronically."[54] Thus, the advisory made clear that the existing language of regulation 1.35 "appl[ies] to records that are created or retained in an electronic format, including email, instant messages, and other forms of communication created or transmitted electronically for all trading."[55] Accordingly, under the Commission's existing regulations, FCMs, IBs, and DCM members are required to retain and produce for inspection any such electronic records, subject to the retention and accessibility requirements set forth in regulation 1.31.

Notwithstanding the DMO advisory relating to certain electronic records, the Commission's existing recordkeeping requirements, as they relate to FCMs, IBs and DCM members, remain limited by a 1996 Commission decision, *Gilbert* v. *Lind-Waldock & Co.,* wherein audio tapes of telephone conversations with customers were found to be beyond the definition of "records" covered by regulation 1.35.[56]

Consequently, where Commission-regulated persons use oral communications, the Commission has encountered greater difficulties in effectively exercising its enforcement responsibilities, thereby increasing the potential for market abuses. Such difficulties have been particularly acute in cases where the Commission is required to establish a threshold level of knowledge and/or intent on the part of the actor, such as cases involving market manipulation and false reporting. The Commission's enforcement success in such cases often has correlated directly with the

[50] 17 CFR 1.31(a) (emphasis added).

[51] DFA section 721(a)(13).

[52] Accordingly, the Commission also proposes to amend the title of regulation 1.35 to reflect such a change. Therefore, proposed regulation 1.35 is entitled "Records of commodity interest and cash commodity transactions."

[53] *See* 7 U.S.C. 1a(28) and 1a(31), as amended by DFA sections 721(a)(13) and (a)(15), respectively.

[54] *See* Recordkeeping Advisory, *supra* note 47, at 3.

[55] *Id.* at 4.

[56] [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,720 at 43,992 n.23 (CFTC June 17, 1996).

existence of high-quality recordings of voice communications between the persons involved. Conversely, the Commission's enforcement capabilities have been limited in cases where such voice recordings were not available.

Significant technological advancements in recent years, particularly with respect to the cost of capturing and retaining copies of electronic material, including telephone communications, have made the prospect of enhancing the Commission's recordkeeping requirements for oral communications more economically feasible and systemically prudent. Evidence of these trends was examined in March 2008 by the United Kingdom's Financial Services Authority ("FSA"), which studied the issue of mandating the recording and retention of voice conversations and electronic communications. The FSA issued a Policy Statement detailing its findings and ultimately implemented rules relating to the recording and retention of such communications, including a rule requiring all financial service firms to record any relevant communication by employees on their firm-issued or firm-sanctioned cell phones that will take effect on November 14, 2011.[57] Similar rules that mandate recording of certain voice and/or telephone conversations have been promulgated by the Hong Kong Securities and Futures Commission [58] and by the Autorité des Marchés Financiers in France,[59] and have been recommended by the International Organization of Securities Commissions ("IOSCO").[60]

Under the FSA rules, firms (identified generally as those entities conducting any of the following activities: receiving, executing, arranging for execution of customer orders or transactions carried out on behalf of the firm) must take reasonable steps to record relevant (relevant means conversations or communications between the firm and the client or when the firm is acting on behalf of a client with another person) telephone conversations (including mobile telephones) and keep a copy of relevant electronic communications that enable the referenced activities to be carried out. Firms are required to keep recordings of certain telephone lines for a period of at least six months in a medium that is readily accessible.

In promulgating this rule, the FSA issued guidance stating the following benefits: "i) recorded communication may increase the probability of successful enforcement; ii) this reduces the expected value to be gained from committing market abuse; and iii) this, in principle, leads to increased market confidence and greater price efficiency." In determining its policy, the FSA conducted a cost-benefit analysis, including eight meetings with several trade associations including the Securities Industry and Financial Markets Association ("SIFMA"), the International Swaps and Derivatives Association ("ISDA"), and the Futures and Options Association ("FOA"). The FSA report estimated that 80% of telephone lines of its firms that would need to be recorded were already being recorded at the time of its study.[61]

Indeed, the futures industry has imposed a requirement on certain of its member firms to tape telephone conversations with customers since 1997. Since then, the National Futures Association ("NFA") has required member firms with more than a certain percentage of APs who have been disciplined to record all telephone conversations between the member's APs and both existing and potential customers for a period of two years. Those recordings must be retained for a period of five years from the date each tape is created, and the tapes shall be readily accessible during the first two years of the five year period.[62] A similar rule exists in the securities industry.[63]

Consistent with these developments, the proposed change to regulation 1.35(a) would explicitly require FCMs, RFEDs, IBs and members of DCMs and SEFs to record all oral communications that lead to the execution of transactions in a commodity interest or cash commodity. In addition to increasing consistency across regulatory regimes, this proposal would harmonize regulation 1.35 with the recordkeeping requirements proposed for SDs and MSPs under the Dodd-Frank Act.[64] The proposed amendments to regulation 1.35 would require that the recorded communications be identifiable by counterparty and transaction. As noted above, one of the proposed revisions to regulation 1.31 would require that each recorded communication be maintained in its native file format and produced in a form specified by any Commission representative. Records of these communications may continue to be stored on electronic storage media, provided, however, that for electronic records, the storage media must preserve the native file format of the electronic records. Records must be maintained for a period of five years and shall be readily accessible for the first two years of that five-year period.

The Commission solicits comments on the potential costs and benefits of requiring registrants to record and maintain oral communications as provided in the proposed rule.[65]

As part of the ministerial amendments proposed in this release, the Commission is proposing to renumber portions of regulation 1.35 so that paragraphs currently numbered 1.35(a-1) and 1.35(a-2) will be renumbered 1.35(b) and 1.35(c), respectively. As a result, paragraphs currently numbered 1.35(b), (c), (d) and (e) will be

[57] Financial Services Authority, "Policy Statement: Telephone Recording: recording of voice conversations and electronic communications" (Mar. 2008); Financial Services Authority, "Taping: Removing the mobile phone exemption," (Mar. 2010); Financial Services Authority, "Policy Statement: Taping of Mobile Phones: Feedback on CP 10/7 and Final Rules," (Nov. 2010).

[58] Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission para. 3.9 (2010) (H.K.).

[59] General Regulation of the Autorité des Marchés Financiers art. 313–51 (2010) (Fr.).

[60] Press Release, International Organization of Securities Commissions, "IOSCO Publishes Recommendations to Enhance Commodity Futures Markets Oversight," (Mar. 5, 2009), *http://www.iosco.org/news/pdf/IOSCONEWS137.pdf.* The IOSCO members on the committee formulating the recommendations included Brazil, Canada (Ontario and Quebec), Dubai, France, Germany, Hong Kong, Italy, Japan, Norway, Switzerland, the United Kingdom, and the United States.

[61] *See* Financial Services Authority, "Policy Statement: Telephone Recording: recording of voice conversations and electronic communications" (Mar. 2008); Financial Services Authority, "Taping: Removing the mobile phone exemption" (Mar. 2010); Financial Services Authority, "Policy Statement: Taping of Mobile Phones: Feedback on CP 10/7 and Final Rules" (Nov. 2010).

[62] *See* Interpretative Notice to NFA Compliance Rule 2–9, Supervision of Telemarketing Activity, 9021 (Feb. 18, 1997).

[63] *See* NASD Rule 3010, Supervision (the procedures required by this rule include tape-recording all telephone conversations between the member's registered persons and both existing and potential customers. All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place).

[64] *See* Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 FR 7666, Dec. 9, 2010 (Proposed regulation 23.202(a)(1) would require "[e]ach swap dealer and major swap participant [to] make and keep pre-execution trade information, including, at a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media").

[65] The Commission has received several comments on the costs and benefits associated with its proposed regulation 23.202 Daily Trading Records (Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 FR 76666, Dec. 9, 2010) and will consider those comments in connection with these proposed rules. The comments are available on the Commission's Web site at *http://www.cftc.gov.*

renumbered 1.35(d), (e) (f) and (g), respectively.

Because proposed regulation 1.35 extends recordkeeping obligations to swaps, the Commission has proposed special language for swaps, where appropriate. In paragraph (b)(2) (proposed (d)(2)) (records of futures, commodity options, and retail forex exchange transactions for each account), the Commission has proposed adding provision (iv). Proposed regulation 1.35(d)(2)(iv) would require FCMs, IBs, and any clearing members clearing swaps executed on a DCM or SEF to maintain records describing the date, price, quantity, market, commodity, and, if cleared, DCO of each swap.

The Commission recognizes that money managers currently execute bunched swap orders on behalf of clients and allocate the trades to individual clients post-execution. The Commission believes that the bunched order procedures currently applicable to futures can be adapted for use in swap trading. Therefore, the Commission proposes to amend subsection (a-1)(5) (proposed (b)(5)), which addresses post-execution allocation of bunched orders. As discussed below, the Commission also is proposing to delete appendix C to part 1, which predated regulation 1.35(a-1)(5) (proposed (b)(5)) and also addresses bunched orders.

In order to have a single standard for all intermediaries that might have discretion over customer accounts, the Commission is proposing to include FCMs and IBs as eligible account managers in regulation 1.35(a–1)(5) (proposed (b)(5)). Unlike other account managers, however, FCMs and IBs are prohibited from including proprietary trades in a bunched order with customer trades. Accordingly, the Commission is proposing to add a cross-reference in regulation 1.35(a–1)(5) (proposed (b)(5)) to regulations 155.3 and 155.4, which impose that restriction on FCMs and IBs, respectively. The Commission requests comment on whether the proposal to add FCMs and IBs to the list of eligible account managers is appropriate.

The Commission further proposes to amend regulation 1.35(a–1) (proposed (b)) to provide that specific customer account identifiers need not be included in confirmations or acknowledgments provided pursuant to proposed regulation 23.501(a), if the requirements of regulation 1.35(a–1)(5) (proposed (b)(5)) are met. This would enable account managers to bunch orders for trades executed bilaterally with SDs or MSPs. The proposal would require that, similar to the current procedure for futures, the allocation be completed by the end of the day of execution and provided to the counterparty. The Commission requests comment on whether the proposed procedures for handling bunched swap orders would be effective. In particular, the Commission requests comment on whether allocation can be conducted by the end of the day of execution.

The Commission proposes deleting paragraphs (f)-(l) of regulation 1.35. Pursuant to the CFMA, regulation 38.2 required DCMs to comply with an enumerated list of Commission regulations, and exempted them from all remaining Commission regulations that were no longer applicable post-CFMA.[66] Paragraphs (f)-(l) of regulation 1.35 are not among those enumerated regulations still applicable to DCMs and, therefore, have been moot since regulation 38.2 took effect. Regulations 1.35(f)-(l) required contract markets: To identify floor brokers, floor traders, and clearing members in a certain manner; to keep records indicating the time of trade executions in a certain manner; to maintain records of changes in the price of transactions; to demonstrate their effectiveness in complying with recordkeeping obligations; and to create rules imposing certain recordkeeping requirements on contract market members. The DCM Core Principles proposal in December 2010 substantially revised part 38, but did not revoke regulation 38.2.[67]

As part of the ministerial amendments proposed in this release, the Commission is proposing to eliminate from the Commission's regulations any provisions that have been inapplicable to DCMs since the passage of the CFMA, and that remain inapplicable after the passage of the DFA. Paragraphs (f)-(l) of regulation 1.35 are among those provisions. Pursuant to the proposed removal of paragraph (j) of regulation 1.35, the Commission also proposes copying most of that provision into proposed subsection (d)(7)(i) (currently (b)(7)(i)).

Finally, the Commission proposes the following technical correction to regulation 1.35(b)(3)(v) (proposed (d)(3)(v)): that the final sentence reference "commodity futures, retail forex, commodity option, or swap books and records" instead of "commodity retail forex or commodity option books and records."

[66] *See* 71 FR 1964, Jan. 12, 2006.

[67] Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, Dec. 22, 2010.

6. Regulation 1.37: Customer's or Option Customer's Name, Address, and Occupation Recorded; Record of Guarantor or Controller of Account

Dodd-Frank Act section 723(a)(3) added a new section 2(h)(8) to the CEA to require, among other things, that swaps subject to the clearing requirement of CEA section 2(h)(1) be executed either on a DCM or on a SEF. The DFA established SEFs as a new category of regulated markets for the purpose of trading and executing swaps.[68] Because SEFs are now regulated markets under the CEA, many of the Commission's existing regulatory provisions that currently are applicable to DCMs also will become applicable to SEFs.

Accordingly, the Commission proposes to amend paragraphs (c) and (d) of regulation 1.37, pertaining to recording foreign traders' and guarantors' names, addresses, and business information. Currently, these provisions apply to DCMs and futures and options contracts executed on those facilities. The proposed revision would amend the provisions to also include SEFs and swap transactions. Additionally, the Commission proposes to amend the title and remaining text of regulation 1.37 to reflect the proposed removal of the term "option customer."[69]

7. Regulation 1.39: Simultaneous Buying and Selling Orders of Different Principals; Execution of, for and Between Principals

Like regulation 1.37, the Commission is proposing to amend regulation 1.39 to apply it to SEFs and swaps. Regulation 1.39, which currently applies to members of contract markets, governs the simultaneous execution of buy and sell orders of different principals for the same commodity for future delivery by a member and permits the execution of such orders between such principals on a contract market. The Commission proposes to amend this provision to include eligible contract participants ("ECPs") on SEFs and registrants, and to include swap transactions. The Commission is also amending paragraph (c) to eliminate the reference to "cross trades" as they are no longer defined under section 4c(a) of the Act, as amended by the DFA.

[68] Section 723(a)(3) of the Dodd-Frank Act amends section 2(h) of the CEA, providing that with respect to transactions involving a swap subject to the clearing requirement of section 2(h)(1) of the CEA, counterparties must execute the transaction on a DCM or a SEF.

[69] *See supra* note 15 and accompanying text.

8. Regulation 1.40: Crop, Market Information Letters, Reports; Copies Required

Regulation 1.40 requires FCMs, RFEDs, IBs and members of contract markets to furnish to the Commission certain information they publish or circulate concerning crop or market information affecting prices of commodities. The Commission is proposing to apply regulation 1.40 to ECPs trading on SEFs to the extent that such ECPs have trading privileges on the SEF. ECPs that do not have trading privileges on a SEF would not be subject to regulation 1.40. The amendments also update the forms of communication covered by the regulation by replacing the word "telegram" with "telecommunication."

9. Regulation 1.59: Activities of Self-Regulatory Employees, Governing Board Members, Committee Members and Consultants

The Commission proposes to amend regulation 1.59 to include SEFs and swaps. The Commission is also proposing to amend regulation 1.59(b) to correct certain cross-references to the Act and its regulations. Paragraph (c) of proposed regulation 1.59 has been revised to apply only to registered futures associations, as the prohibitions contained therein applicable to the other SROs already are addressed in proposed regulation 40.9.

10. Regulation 1.63: Service on Self-Regulatory Organization Governing Boards or Committees by Persons With Disciplinary Histories

The Commission is proposing to amend regulation 1.63 to correct certain cross-references to the Act and its regulations. The Commission also is proposing to amend paragraph (d) to incorporate the posting of notices required under that paragraph on each SRO's Web site.

11. Regulation 1.67: Notification of Final Disciplinary Action Involving Financial Harm to a Customer

Regulation 1.67 requires contract markets, upon taking any final disciplinary action involving a member causing financial harm to a non-member, to provide notice to the FCM that cleared the transaction. FCMs and other registrants on SEFs should also be notified of any disciplinary action involving transactions on a SEF they executed for ECPs. Accordingly, the Commission is proposing to amend regulation 1.67 to include SEFs, registrants and ECPs on such facilities.

12. Regulation 1.68: Customer Election Not To Have Funds, Carried by a Futures Commission Merchant for Trading on a Registered Derivatives Transaction Execution Facility, Separately Accounted for and Segregated

The Commission proposes to remove regulation 1.68. Regulation 1.68 permits a customer of an FCM to allow the FCM to not separately account for and segregate such customer's funds if, among other things, such funds are being carried by the FCM to trade on or through the facilities of a DTEF, a category of trading organization added to the CEA by section 111 of the CFMA.[70] No DTEF has ever registered with the Commission. Furthermore, section 734 of the Dodd-Frank Act repeals the DTEF provisions in the CEA, effective July 15, 2011. Therefore, because the statutory provisions underpinning regulation 1.68 will be repealed, the Commission proposes to remove it from the Commission's regulations.[71]

13. Regulations 1.44, 1.53, and 1.62—Deletion of Regulations Inapplicable to Designated Contract Markets

The CFMA adopted core principles for DCMs.[72] On August 10, 2001, the Commission published final rules implementing provisions of the CFMA, in which it concluded that the CFMA's framework effectively constituted a broad exemption from many of the existing regulations applicable to DCMs.[73] In implementing the provisions of the CFMA, the final rule exempted DCMs from such regulations. Specifically, the final rule codified regulation 38.2, which required DCMs to comply with an enumerated list of Commission regulations, and exempted them from all remaining Commission regulations no longer applicable post-CFMA. As part of the ministerial amendments proposed in this release, the Commission is proposing to eliminate from the Commission's regulations any provisions that have been inapplicable to DCMs since the CFMA was enacted and that remain inapplicable after enactment of the DFA. Accordingly, the Commission proposes to eliminate the following regulations: Regulation 1.44 (Records and reports of warehouses, depositories, and other similar entities; visitation of premises), regulation 1.53 (Enforcement of contract market bylaws, rules, regulations, and resolutions), and regulation 1.62 (Contract market requirement for floor broker and floor trader registration).

14. Appendix C to Part 1: Bunched Orders and Account Identification

The Commission proposes to eliminate appendix C to part 1. Appendix C consists of a Commission Interpretation regarding certain account identification requirements pertaining to the practice of combining orders for different accounts into a single order book, referred to as bunched orders. The procedures for bunched orders are set forth in regulation 1.35(a–1)(5). Accordingly, the procedures under appendix C to part 1 are duplicative and no longer necessary.

B. Part 7

The Commission is proposing to rename part 7 of the Commission's regulations "Registered Entity Rules Altered or Supplemented by the Commission," thus reflecting the language in section 8a(7) of the Act, as amended by the Dodd-Frank Act, which provides the basis for Part 7. The Commission is also proposing to make a similar change in regulation 7.1, replacing contract market rules with registered entity rules. Finally, the Commission is proposing to remove and reserve subparts B (Chicago Mercantile Exchange Rules) and C (Board of Trade of the City of Chicago Rules) and their associated sections.

C. Part 8

The Commission proposes to remove part 8 of its regulations.[74] As part of its implementation of the Dodd-Frank Act, on December 1, 2010, the Commission issued a comprehensive NPRM for DCMs.[75] In the NPRM, the Commission proposed regulations in "Subpart N—Disciplinary Procedures" of part 38 to amend the disciplinary procedure requirements applicable to DCMs.[76] Several of the proposed regulations in

[70] Public Law 106–554, 114 Stat. 2763, app. E (2000) (codified at CEA section 5a, 7 U.S.C. 7a).

[71] The Commission is also proposing to delete all other references to DTEFs, except those already removed by other proposals, throughout its regulations. *See infra* Part II.G.

[72] Public Law 106–554, 114 Stat. 2763 (2000).

[73] A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations, 66 FR 42256, Aug. 10, 2001.

[74] Regulation 38.2 exempts designated contract markets from all Commission rules not specifically reserved. 17 CFR 38.2. The Part 8 rules were not reserved.

[75] Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, Dec. 22, 2010.

[76] 75 FR at 80597. Section 735(a) of the Dodd-Frank Act eliminates all DCM designation criteria, including Designation Criterion 6 (Disciplinary Procedures). Section 735(b) of the Dodd-Frank Act creates a new Core Principle 13 (Disciplinary Procedures) that is devoted exclusively to exchange disciplinary proceedings, and captures disciplinary concepts inherent in both Designation Criterion 6 and in current DCM Core Principle 2.

subpart N of part 38 are similar to the text of the disciplinary procedures found in part 8 of the Commission's regulations.[77] Although the Commission noted in the DCM NPRM that the proposed disciplinary procedures propose new disciplinary procedures for inclusion in part 38, the Commission proposes to remove part 8 from its regulations to avoid any confusion that could result from those regulations containing two sets of exchange disciplinary procedures.[78] The effective date of any deletion of these part 8 regulations would be contemporaneous with the effective date of any changes to the part 38 regulations.

D. Parts 15, 18, 21, and 36

The Commission also proposes to incorporate changes into parts 15, 18, 21, and 36 of its regulations to account for (1) the DFA's elimination of two categories of exempt markets, exempt commercial markets ("ECMs") and electronic boards of trade ("EBOTs"); and (2) the DFA's grandfather relief provisions for such entities.

Section 723 of the DFA strikes CEA section 2(h), thus eliminating the ECM category. Section 734 of the DFA strikes CEA section 5d, thus eliminating the EBOT category. Section 734 also strikes CEA section 5a, thus eliminating the DTEF category of regulated markets effective July 15, 2011, as discussed above.

Both sections 723 and 734 of the Dodd-Frank Act contain grandfather provisions whereby ECMs and EBOTs may petition the Commission to continue to operate as ECMs and EBOTs. Pursuant to the grandfather provisions, in September 2010, the Commission issued orders regarding the treatment of such grandfather petitions (the "Grandfather Relief Orders").[79] Under the Grandfather Relief Orders, the Commission may, subject to certain conditions, provide relief to ECMs and EBOTs for up to one year.

Pursuant to the DFA and the Grandfather Relief Orders, the Commission proposes to remove from parts 15, 18, 21 and 36[80] references to CEA sections 2(h) and 5d and to replace those references, where appropriate, with references to the Grandfather Relief Orders as the authority under which ECMs and EBOTs can continue to operate. The Commission also proposes to remove from parts 15, 18, 21, and 36 of its regulations references to CEA sections 2(d), 2(g), and 5a, as well as references to DTEFs.

E. Parts 41, 140, and 145

The Commission also proposes to incorporate changes into its regulations to account for other new categories of registered entities and to include new products now subject to Commission jurisdiction. Section 733 of the Dodd-Frank Act added new section 5h to the CEA and created SEFs. Section 728 of the Dodd-Frank Act added new section 21 to the CEA and created SDRs. SEFs will allow for the trading and clearing of swap transactions between ECPs, as that term is defined in CEA section 1a(18).[81] In addition to the amendments contained in proposed part 37, the Commission is proposing additional amendments throughout the regulations to include SEFs and SDRs where necessary. The Commission also proposes to delete from part 41 references to DTEFs as that term was deleted from CEA section 5b by the Dodd-Frank Act, effective July 15, 2011.[82]

The proposed changes throughout parts 140 (Organization, Functions and Procedures of the Commission) and 145 (Commission Records and Information) reflect the need to incorporate SEFs and SDRs into the Commission's regulations dealing with the rights and obligations of other registered entities. Proposed regulation 140.72 provides the Commission with the authority to disclose confidential information to SEFs and SDRs. This provision allows the Commission, or specifically identified Commission personnel, to disclose information necessary to effectuate the purposes of the CEA, including such matters as transactions or market operations. Proposed regulation 140.96 authorizes the Commission to publish in the Federal Register information pertaining to the applications for registration of DCMs, SEFs and SDRs, as well as new rules and rule amendments which present novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the Act, or regulations under the Act. Proposed regulation 140.99 also includes SEFs and SDRs in the category of registered entities that may petition the Commission for exemptive relief and no-action and interpretative letters.

Proposed regulation 140.735–3 adds SEFs and SDRs to the list of entities from which Commission members and employees may not accept employment or compensation. The Commission proposes adding swaps to those agreements, contracts or transactions Commission staff may not trade. The Commission would like to take this opportunity to also add retail forex transactions, as that term is defined in regulation 5.1(m), to this list.

Finally, proposed regulation 145.9 expands the definition of "submitter" by adding SEFs and SDRs to the list of registered entities to which a person's confidential information has been submitted, and which, in turn, submit that information to the Commission. This amendment allows individuals who have submitted information to a SEF or SDR to request confidential treatment under regulation 145.9.

F. Part 155

1. Regulation 155.2: Trading Standards for Floor Brokers

The Commission proposes removing the references to regulation 1.41 within regulation 155.2 because the Commission removed and reserved regulation 1.41 in 2001 (66 FR 42256) pursuant to the CFMA. The Commission also proposes removing the related reference to former section 5a(a)(12)(A) of the Act.

G. Other General Changes to CFTC Regulations

1. Removal of References to DTEFs

The Commission proposes the removal of references to DTEFs and regulations pertaining to DTEFs in parts 1, 5, 15, 36, 41, 140, and 155 because section 734 of the DFA abolished DTEFs, effective July 15, 2011.[83]

2. Other Conforming Changes

The Commission also proposes in various parts of its regulations to update

[77] Paragraph (b)(4) of the acceptable practices for former Core Principle 2 referenced part 8 of the Commission's regulations as an example that DCMs could follow to comply with Core Principle 2. 17 CFR pt. 38, app. B, Acceptable Practices for Core Principle 2 at (b)(4). In its experience, the Commission has found that many DCMs' disciplinary programs do in fact model their disciplinary structures and processes on part 8.

[78] 75 FR at 80597.

[79] 75 FR 56513, Sept. 16, 2010.

[80] Part 36 provisions apply to ECMs and EBOTs. The Commission is not proposing to delete part 36 in its entirety because part 36 provisions will continue to apply to ECMs and EBOTs that continue to operate under the Grandfather Relief Orders.

[81] For a detailed discussion of the proposed rules as they directly relate to SEFs, *see* 76 FR 1214, Jan. 7, 2011.

[82] Section 5b of the CEA provided for the registration of DTEFs. Although secondary references to DTEFs remain in the act, none of those would enable an entity to commence operations as a DTEF. The proposed deletions are in regulations 41.2, 41.12, 41.13, 41.21–41.25, 41.27, 41.43 and 41.49.

[83] This proposed rulemaking is not deleting those DTEF references that other NPRMs have already proposed deleting from the Commission's regulations (*e.g.,* some references in part 3 and all references in part 40).

cross-references to CEA provisions, now renumbered after the passage of the DFA. An example of one such change is proposed regulation 166.5, in which the Commission proposes to update the statutory reference to "eligible contract participant," to reflect the Dodd-Frank Act's renumbering of CEA section 1a. Additionally, where typographical errors or other minor inconsistencies were discovered while reviewing CFTC regulations, the Proposal includes instructions and proposed regulations to correct them.

III. Request for Comment

The Commission requests comment generally on all aspects of the proposed rules. As discussed in more detail above, the Commission also requests comment on: whether any changes to the "physical" definition in regulation 1.3 are necessary or warranted; the potential costs and effects of the proposed new requirements that all books and records be maintained in their original form (for paper) and their native file format (for electronic records); whether the retention period for any communication medium (*e.g.,* oral communications) should be shorter than the retention period applicable to other required records; the potential costs and effects of requiring registrants to record and maintain oral communications; whether the proposal to add FCMs and IBs to the list of eligible account managers is appropriate; and whether the proposed procedures for handling bunched swap orders are feasible.

IV. Administrative Compliance

A. Paperwork Reduction Act

The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it has been approved by the Office of Management and Budget ("OMB") and displays a currently valid control number.[84] This proposed rulemaking contains new collections of information for which the Commission must seek a valid control number. The Commission therefore is submitting this proposal to OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for these new collections of information is "Books and Records Requirements for Certain Registrants and Other Market Participants." Responses to these information collections would be mandatory.

With respect to all of the Commission's collections, the Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Commodity Exchange Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information To Be Provided by Reporting Entities/Persons

a. Proposed Amendments to Regulation 1.31 (Books and Records; Keeping and Inspection)

Regulation 1.31 describes the manner in which "all books and records required to be kept by the Act" must be maintained. Most of the requirements of regulation 1.31 are applicable to FCMs, IBs, RFEDs, CTAs, CPOs, and members of DCMs and SEFs in conjunction with other part 1 regulations, and the PRA burdens either have been or will be covered by the OMB control numbers associated with the other part 1 regulations. Examples of these other part 1 regulations are regulation 1.33, which requires certain registrants to produce monthly and confirmation statements, and regulation 1.35, which requires the maintenance of records of cash commodity, futures, and option transactions. Regulation 1.31 would also be applicable to SDs and MSPs in conjunction with proposed part 23 regulations.[85]

i. Obligation To Develop and Maintain Recordkeeping Policies and Controls

Regulation 1.31 additionally contains discrete stand-alone collections for which a control number must be sought. Subsection (b)(3)(ii) requires persons keeping records using electronic storage media to "develop and maintain written operational procedures and controls (an 'audit system') designed to provide accountability over [the entry of records into the electronic storage media]." This provision is already applicable to FCMs, RFEDs, IBs, CTAs, CPOs, and members of DCMs, and would be applicable to SDs and MSPs pursuant to the proposed part 23 regulations. As members of SEFs will be newly subject to the part 1 regulations, the Commission must estimate the burden of subsection (b)(3)(ii) on these entities and seek OMB approval for this new application of the subsection.

The Commission anticipates that members of SEFs may incur certain one-time start-up costs in connection with establishing the audit system. This will include drafting and adopting procedures and controls and may include updates to existing recordkeeping systems. The Commission estimates the burden hours associated with these one-time start-up costs to be 100 hours.

As there will not be any SEFs operating until after the Dodd-Frank Act becomes effective in July 2011, it is not possible for the Commission to estimate with precision how many SEF members there will be or how many of those SEF members will be FCMs, SDs, or MSPs that are being covered by already pending existing information collections. Nonetheless, the Commission has estimated that 35 SEFs will register with it after the Dodd-Frank Act becomes effective, and now is estimating that there may be on average 100 members of a SEF that will not fall under one of the other collections. Accordingly, the aggregate new burden of subsection (b)(3)(ii) is estimated to be 100 one-time burden hours to approximately 3,500 SEF members.

The Commission expects that compliance and operations managers will be employed in the establishment of the written procedures and controls under subsection (b)(3)(ii). According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, "Financial Managers," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $74.41.[86] Because members of SEFs may be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly wage of $100 per hour. Accordingly, the burden associated with developing written procedures and controls will total approximately $10,000 for each applicable member of a SEF on a one-time basis.

ii. Representation to the Commission

Members of SEFs will also have to comply with regulation 1.31(c), which

[84] 44 U.S.C. 3501 *et seq.*

[85] Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 FR 76666, Dec. 9, 2010.

[86] Occupational Employment Statistics, Occupation Employment and Wages: 11–3031 Financial Managers, *http://www.bls.gov/oes/current/oes113031.htm* (May 2009).

requires persons employing an electronic storage system to provide a representation to the Commission prior to the initial use of the system.[87] The Commission estimates the burden of drafting this representation in accordance with regulation 1.31(c) and submitting it to the Commission to be 1 hour.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $74.41.[88] Because members of SEFs may be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly wage of $100 per hour. Accordingly, the burden associated with drafting and submitting the representation prior to using an electronic storage system would be $100 per affected member of a SEF.

b. Proposed Amendments to Regulation 1.33 (Monthly and Confirmation Statements)

The Commission proposes amending regulation 1.33 by requiring FCMs to include in their monthly and confirmation statements sent to customers certain specified information related to a customer's swap positions. The information required to be summarized in respect of swap transactions would be analogous to information currently required to be kept in respect of futures and commodity option transactions. The Commission estimates the burden of complying with regulation 1.33 in respect of swap transactions to be 1 hour for each swap confirmation and 1 hour for each monthly statement.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $74.41.[89] Accordingly the burden associated with complying with 1.33 in respect of a swap confirmation and each monthly statement to be $74.41 ($74.41 × 1 hour) for each swap transaction entered into.

c. Proposed Amendments to Regulation 1.35 (Records of Commodity Interest and Cash Commodity Transactions)

The proposed amendments would require members of SEFs to comply with the regulation 1.35 recordkeeping requirements that are currently followed by FCMs, IBs, RFEDs, and members of DCMs. The Commission anticipates that members of SEFs will spend approximately eight hours per trading day (or 2,016 hours per year based on 252 trading days) compiling and maintaining transaction records.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, "Financial Managers," (which includes operations managers) that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $74.41.[90] Because members of SEFs may be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly wage of $100 per hour. Thus, each SEF member will have a burden of $201,600 per year (2,016 hours × $100/hour).

The proposed amendments to regulation 1.35 would also require FCMs, RFEDs, IBs, and members of DCMs to comply with the regulation 1.35 recordkeeping requirements for any swap transactions into which they enter. Because the proposed recordkeeping requirements for swaps would be equivalent to the recordkeeping requirements they must currently follow in respect of futures and commodity option transactions, the additional burden for any swap transaction would be the same for any additional futures and commodity option transaction for which they keep records pursuant to regulation 1.35 in its current form. The Commission estimates that the recordkeeping burden associated with each swap transaction would be 0.5 hours, for a total burden of $50 per transaction.

The proposed amendments to regulation 1.35 would also require that each FCM, IB, RFED and member of a DCM or SEF retain all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions in a commodity interest or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media, with a further requirement that each transaction record be maintained as a separate electronic file identifiable by transaction and counterparty.

The Commission anticipates that the aforementioned registrants and members of DCMs and SEFs may incur certain one-time start-up costs in connection with establishing a system to retain oral communications. The Commission estimates that the cost of procuring systems to record these oral communications will be $55,000 for an average large entity that does not already have such systems in place, and estimates procurement costs of $10,000 for each small entity that does not already have such systems in place.

The Commission estimates the burden hours associated with these start-up costs to be 135 hours for any entity that does not already have a system in place. According to the recent Bureau of Labor Statistics, the mean hourly wage of computer programmers under occupation code 15–1021 and computer software engineers under program codes 15–1031 and 1032 are between $34.10 and $44.94.[91] Because members of SEFs may be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of $50 per hour for each of the categories of persons who will have to establish the system for maintaining oral records. Accordingly, the start-up burden associated with establishing an audit system would be $6,750 ($50 × 135 hours) per affected FCM, IB, RFED, member of a DCM, and member of a SEF.

The Commission also estimates that each of these persons will have to devote one hour per trading day to ensure the operation of the system to retain oral records. This would lead to $12,600 per year (1 hour per trading day × 252 trading days per year × $50/hour) per affected FCM, IB, RFED, member of a DCM, and member of a SEF.

[87] As with subsection (b)(3)(ii), regulation 1.31(c) is already applicable or will be made applicable by other actions to FCMs, IBs, DCM members, as well as SDs or MSPs pursuant to proposed part 23 regulations.

[88] Occupational Employment Statistics, Occupation Employment and Wages: 11–3031 Financial Managers, *http://www.bls.gov/oes/current/oes113031.htm* (May 2009).

[89] Occupational Employment Statistics, Occupation Employment and Wages: 11–3031 Financial Managers, *http://www.bls.gov/oes/current/oes113031.htm* (May 2009).

[90] Occupational Employment Statistics, Occupation Employment and Wages: 11–3031 Financial Managers, *http://www.bls.gov/oes/current/oes113031.htm* (May 2009).

[91] Occupational Employment Statistics, Occupational Employment and Wages: 15–1021, Computer Programmers, *http://www.bls.gov/oes/current/oes151021.htm* (May 2009); Occupational Employment Statistics, Occupational Employment and Wages: 15–1031, Computer Software Engineers, Applications, *http://www.bls.gov/oes/current/oes151031.htm* (May 2009); Occupational Employment Statistics, Occupational Employment and Wages: 15–1032, Computer Software Engineers, Systems Software, *http://www.bls.gov/oes/current/oes151032.htm* (May 2009).

d. Amendments to Regulation 1.37 (Customer's Name, Address, and Occupation Recorded; Record of Guarantor or Controller of Account)

The Commission proposes amending regulation 1.37(a) by requiring each FCM, IB, and member of a DCM to keep the same kind of record (showing the customer's name, address, occupation or business, and name of any other person guaranteeing the account or exercising any trading control over it) for any swap transactions it "carries or introduces" for another person. The Commission estimates that it will take each of these entities an average of 0.4 hours to gather the information and file it or key it into the entity's customer recordkeeping programs.

The Commission also proposes amending regulation 1.37(b) by requiring each FCM carrying an omnibus account for another FCM, a foreign broker, a member of a DCM or any other person to maintain a daily record for such account of the total open long contracts and the total open short contracts in each swap. FCMs presently have an equivalent obligation with respect to futures and commodity option transactions. These daily records typically are maintained in electronic form. Therefore, once a position is entered into the entity's systems, the daily record will be automatically available. The Commission estimates that entering the position into the system, commencing with the placement of an order and ending with execution will take each of these entities an average of 0.4 hours.

The Commission additionally proposes amending regulation 1.37(c) by requiring SEFs to comply with a provision that DCMs must currently follow: Keep a record showing the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility or exchange. According to regulation 1.37(d), this provision does not apply in respect of futures/options/swaps that foreign traders execute through FCMs or IBs.

The Commission estimates that it would take a SEF a total of 0.4 hours to prepare each record in accordance with regulation 1.37(c). According to the Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 43–9021, "Data Entry Keyer," that is employed in "Office and Administrative Support" is $14.03.[92] Because SEFs may be large entities employing persons at wages higher than the average, the Commission conservatively estimates the mean hourly wage to be $19.03 per hour. Thus, the burden associated with preparing a record with regulation 1.37(c) would be $7.61 ($19.03/hour × 0.4 hours).

e. Amendments to Regulation 1.39 (Simultaneous Buying and Selling Orders of Different Principals; Execution of, for and Between Principals)

The Commission proposes amending regulation 1.39, which currently applies to DCMs, by enabling members of SEFs to execute simultaneous buying and selling orders of different principals pursuant to rules of the SEF if certain conditions are met. Among those conditions, a SEF would have to record these transactions in a manner that "shows all transaction details required to be captured by the Act, Commission rule, or regulation." The Commission anticipates that the data to be captured would already exist in the SEF's trading system. The Commission estimates that it will take the SEF an average of 0.1 hours to capture this data, and storage costs of less than $1 per record.

According to the recent Bureau of Labor Statistics, the mean hourly wage of computer programmers under occupation code 15–1021 and computer software engineers under program codes 15–1031 and 1032 are between $34.10 and $44.94.[93] Because SEFs may be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of $50 per hour for each of the categories of persons who will have to establish the system for maintaining oral records. Accordingly, the start-up burden associated with the data capture requirements would be an average of $5.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[94] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The rules proposed by the Commission are for the most part technical amendments to conform the affected parts to provisions of the Dodd-Frank Act and, as such, non-substantive. The Commission is also amending its books and records regulations to require FCMs, IBs, RFEDs, and members of DCMs to observe recordkeeping requirements for swaps that they currently observe in respect of futures and commodity option transactions. Additionally, the Commission is proposing to apply certain of those books and records regulations to members of SEFs, mirroring obligations that currently are met by members of DCMs. The Commission is also proposing to add a substantive rule change to regulation 1.35. The substantive rules would affect FCMs, IBs, RFEDs, and members of DCMs and SEFs.

Except for the new regulations requiring FCMs, IBs, RFEDs, and members of DCMs and SEFs to record all oral communications leading to the execution of transactions in a commodity interest or cash commodity, the Commission has determined that none of the proposed rules will have a significant economic impact on any substantial number of entities. Additionally, as presented below, the Commission previously has determined or is now determining that all entities except for certain IBs are not small entities for the purposes of the RFA.

Therefore, according to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, is hereby certifying that all rules except for the oral communications recordkeeping rules will not have a significant economic effect on a significant number of small entities. A regulatory flexibility analysis addressing the impact of the oral communications recordkeeping rules on certain IBs is provided herein.

1. FCMs, RFEDs, DCMs, ECPs, and Large Traders

The Commission has previously determined that registered FCMs, RFEDs, DCMs, ECPs, and large traders are not small entities for purposes of the RFA.[95] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a

[92] Occupational Employment Statistics, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523100—Securities and Commodity Contracts Intermediation and Brokerage, *http://www.bls.gov/oes/current/naics4_523100.htm#43-0000* (May 2009).

[93] Occupational Employment Statistics, Occupational Employment and Wages: 15–1021, Computer Programmers, *http://www.bls.gov/oes/current/oes151021.htm* (May 2009); Occupational Employment Statistics, Occupational Employment and Wages: 15–1031, Computer Software Engineers, Applications, *http://www.bls.gov/oes/current/oes151031.htm* (May 2009); Occupational Employment Statistics, Occupational Employment and Wages: 15–1032, Computer Software Engineers, Systems Software, *http://www.bls.gov/oes/current/oes151032.htm* (May 2009).

[94] 5 U.S.C. 601 *et seq.*

[95] See respectively and as indicated: 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, FCMs, and large traders); 66 FR 20740, 20743, Apr. 25, 2001 (ECPs); and 75 FR 55410, 55416, Sept. 19, 2010 (RFEDs).

significant economic impact on a substantial number of small entities with respect to these entities.

2. SEFs

SEFs are new categories of registrant under the Dodd-Frank Act. Therefore, the Commission has not previously addressed the question of whether SEFs are, in fact, "small entities" for purposes of the RFA. For the reasons that follow, the Commission is hereby determining that none of these entities would be small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, with respect to SEFs, will not have a significant impact on a substantial number of small entities.

The Dodd-Frank Act defines a SEF as a trading system or platform in which multiple participants have the ability to accept bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that facilitates the execution of swaps between persons and is not a DCM. The Commission previously determined that a DCM is not a small entity because, among other things, it may only be designated when it meets specific criteria, including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Likewise, the Commission will register an entity as a SEF only after it has met specific criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program. Moreover, members of SEFs, to whom many of the proposed regulations would apply, additionally are not small entities for the purposes of the RFA. As noted above, the Commission previously determined that ECPs are not small entities, and the Dodd-Frank Act provides that only ECPs can enter into swaps on a SEF. Accordingly, as with DCMs, the Commission is hereby determining that SEFs and members of SEFs are not "small entities" for purposes of the RFA.

3. Regulatory Flexibility Analysis for Oral Communication Rules Applicable to IBs

The Commission has not previously determined that IBs are not "small entities" for the purposes of the RFA. Historically, the Commission has evaluated within the context of a particular regulatory proposal whether all or some affected IBs would be considered to be small entities and, if so, the economic impact on them of the particular regulation.

Accordingly, the Commission offers, pursuant to 5 U.S.C. 603, the following initial regulatory flexibility analysis, which it shall transmit to the Chief Counsel for Advocacy of the Small Business Administration as 5 U.S.C. 603 requires:

a. A Description of the Reasons Why Action by the Agency Is Being Considered

The Commission is considering the adoption of the proposed amendments to regulation 1.35 requiring FCMs, RFEDs, IBs and DCM and SEF members to keep records of all oral communications leading to the execution of transactions in a commodity interest or cash commodity for several reasons. To begin, such an amendment to regulation 1.35 would protect customers from abusive sales practices, would protect registrants from the risks associated with transactional disputes, and would allow registrants to follow-up more effectively on customer complaints of abuses by their associated persons. Additionally, the amendment would make enforcement investigations more efficient by preserving critical evidence that otherwise may be lost to lapsed and inconsistent memories. This, in turn, is expected to increase the success of enforcement actions, which benefits customers, regulated entities, and the markets as a whole.[96] Finally, it is being proposed for regulatory parity, as it has been proposed recently for SDs and MSPs as part of their recordkeeping and reporting obligations.[97]

b. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

As stated above, the objective of the proposed amendment to regulation 1.35 is to protect the market participants and the public, as well as to increase market integrity. In terms of the legal basis for this proposed rule, the Commission has been authorized by sections 4g and 8a(5) of the CEA to adopt regulations requiring registrants to keep books and records pertaining to such transactions and positions in a form and manner and for such period as may be required by the Commission.[98]

c. A Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

There are an estimated 1,500 IBs registered with the Commission at any given time. Between 80 and 90% of these IBs are "guaranteed introducing brokers," many of which may be small entities. There are an estimated 11,500 members of DCMs, some of which may be small entities. The Commission believes, however, that it is likely that less than 10% of the members of DCMs would be small entities given the capital and other resources they would need to comply with DCM rules.

d. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Proposed regulation 1.35 would require all FCMs, RFEDs, IBs and members of DCMs or SEFs to keep records of all oral communications that lead to the execution of a commodity interest or cash commodity transaction. All small IBs and small DCM or SEF members will be subject to this requirement. The proposed regulation is primarily a recordkeeping requirement, which will obligate those firms that do not already do so to tape the telephone lines of their traders and sales forces. Maintenance of these oral communications for five years will require investments in hardware, software, and information technology personnel, all of which will be scalable to the size of the enterprise. There may be periodic reporting requirements, most frequently in response to a subpoena from the Commission, any other federal agency that has regulatory or civil enforcement authority over the firm, and the markets in which it conducts business, as well as law enforcement.

e. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The Commission has not identified any Federal rules which may duplicate, overlap, or conflict with the proposed rule. Certain firms may be obligated to

[96] In promulgating its own taping rule, the Financial Services Authority issued guidance stating the following benefits: "(i) Recorded communication may increase the probability of successful enforcement; (ii) this reduces the expected value to be gained from committing market abuse; and (iii) this, in principle, leads to increased market confidence and greater price efficiency." *See* Financial Services Authority, "Policy Statement: Telephone Recording: recording of voice conversations and electronic communications" (Mar. 2008).

[97] *See* Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 FR 76666, Dec. 9, 2010.

[98] 7 U.S.C. 6g and 12a(5).

retain oral communications by rule of a private SRO.

f. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The Commission has identified no significant alternatives that may minimize any significant economic impact of the proposed rule amendment on small entities. Clarification, consolidation, or simplification of compliance and reporting requirements would leave a large portion of the sales operations in the futures industry uncovered, and in consequence, the customers that transact business with them. Moreover, the benefits from the enforcement of the CEA by the Commission and by the Department of Justice at the criminal level would be lost. Finally, leaving a large portion of the sales operations uncovered by this rule could create regulatory arbitrage, causing large entities subject to this rule to move their sales operations into a series of small firms. The same would apply for exemptions.

Given the foregoing, the Commission has determined to treat equally all entities that engage in oral communications that lead to the execution of commodity interest and cash commodity transactions.

To the extent that certain IBs and members of DCMs and SEFs are impacted by the proposed amendments, the RFA analysis focuses on whether the proposed amendments will have a significant economic impact on a substantial number of small entities. At present, such entities are subject to certain recordkeeping retention and reporting requirements, based on the nature of their respective businesses; the proposed amendments would augment the existing recordkeeping retention and reporting requirements of these firms. The Commission understands that recent advancements in technology, particularly with respect to capturing records and storing such records, will enable all affected entities, including small entities, to incorporate into their existing recordkeeping programs the enhanced requirements set forth in the proposed amendments, without encountering a significant economic impact. The United Kingdom's FSA, which recently adopted similar recordkeeping requirements, discussed the declining costs of such recordkeeping programs in a Policy Statement addressing these and other issues.[99]

C. Cost-Benefit Analysis

Section 15(a) of the CEA [100] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) specifies that the costs and benefits shall be considered against five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may give greater weight to one or more of the five enumerated considerations to determine, in its discretion, that a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

1. Costs

a. Amendments to Regulation 1.31

With respect to costs, the Commission has determined that for FCMs, IBs, CPOs, CTAs and members of DCMs, costs to institute recordkeeping systems to retain swap records for the life of the swap (*i.e.,* until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction) and for five years after that date would be far outweighed by the benefits to the financial system as a whole. The Commission is not imposing any cost that a prudent FCM, IB, CPO, CTA, and DCM member would not already incur in maintaining records for swap transactions. A prudent registrant would retain a swap record for the life of the swap to ensure that its rights under the contract are protected and its obligations are fulfilled.

As to the proposed requirements that records be kept in their original form (for paper records) and native file format (for electronic records), that the method of storage maintains electronic records in their native file format, and that the records be produced to the Commission in a form specified by the Commission, the Commission is not imposing significant new burdens on registrants and regulated entities. The Commission understands that registrants and regulated entities already retain electronic records in these forms. Moreover, to the extent that a registrant's transactional activity is retained on a platform operated by or additionally is captured by a regulated entity, trading mechanism, clearinghouse or another regulated entity (for example, where an IB transacts through an FCM) that is required to maintain these records in the same form, the registrant may rely on the retention requirements of the other registrant in order to comply with the proposed requirements of regulation 1.31.

b. Amendments to Regulation 1.33, 1.35, 1.37, and 1.39

The proposed regulations would require FCMs, IBs, RFEDs, DCMs and members of DCMs to comply with the same recordkeeping functions for swaps that they currently adhere to with respect to futures and commodity option transactions. The Commission anticipates that in complying with amended regulations 1.33, 1.35, 1.37 and 1.39, the aforementioned persons will already have the framework for producing and storing records and would only make adjustments as necessary to provide the additional information regarding swaps. Because the recordkeeping requirements in respect of swaps would be equivalent to the existing recordkeeping requirements for futures and commodity option transactions, the cost of complying with the proposed amendments should not differ materially from the cost of recording additional futures or commodity option transactions.

The Commission has also amended the aforementioned recordkeeping regulations by applying them to SEFs and their members. These persons will therefore need to factor in the costs in complying with these regulations before commencing their operations.

c. Amendments to Regulation 1.35 (Records of Oral Communications).

To the extent FCMs, RFEDs, IBs, members of DCMs, and members of SEFs enter into transactions in a commodity interest or cash commodity, the newly proposed requirements under regulation 1.35 would require them to record all oral communications that lead to the execution of transactions in a commodity interest or cash commodity. As described above, it is expected that any additional cost imposed by the recordkeeping requirements of proposed amendments to regulation 1.35 would be minimal for the average large FCM,

[99] Financial Services Authority, "Policy Statement: Telephone Recording: recording of voice conversations and electronic communications" (Mar. 2008). In addition to the rules promulgated by the Financial Services Authority, similar rules which mandate recording of certain voice and/or telephone conversations have been promulgated by the Comissão de Valores Mobiliários in Brazil and by the Autorité des Marchés Financiers in France.

[100] 7 U.S.C. 19(a).

RFED, IB, or DCM or SEF member because the information and data required to be recorded is information and data a prudent FCM, RFED, IB, or DCM or SEF member would already maintain during the ordinary course of its business.[101] Moreover, most FCMs, RFEDs, IBs, or members of DCMs or SEFs have adequate existing resources, technology systems, and recordkeeping structures that are capable of adjusting to the new regulatory framework without material diversion of resources away from commercial operations.

The Commission also believes that such costs would be minimal for the average small IB or member of a SEF who does not have digital telephone systems in place and may not have robust or up-to-date electronic data saving and storage capacity.

2. Benefits

a. Amendments to Regulation 1.31.

The Commission believes that the benefit of requiring FCMs, IBs, CPOs, CTAs, and DCM and SEF members to maintain swap records for the life of the swap (*i.e.,* until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction) and for five years after that date is significant, as is the requirement to maintain records in their native format. Proposed regulation 23.203(b)(2) has already proposed requiring SDs and MSPs to maintain swap records for the life of the swap and for five years after termination, maturity, expiration, transfer, assignment, or novation date of the transaction.[102] It would therefore be inconsistent not to require other registrants, as well as DCM and SEF members to have the same obligation for swap records that they keep. The five-year retention period, which already applies to records for futures and commodity option transactions, is meant to protect market participants, the integrity of the market, and the public at large by ensuring that an audit trail is maintained for routine compliance examinations, in the event of counterparty complaints, or in case of other events that may trigger an investigation by the Commission and other government agencies.

b. Amendments to Regulations 1.33, 1.35, 1.37, and 1.39

The Commission believes that there are significant benefits in requiring FCMs, IBs, RFEDs, DCMs and members of DCMs to comply with the same recordkeeping functions for swaps that they currently adhere to with respect to futures and commodity option transactions. The Commission also believes that there are significant benefits in requiring SEFs and members of SEFs to comply with certain of the recordkeeping functions contained in regulations 1.33, 1.35, 1.37 and 1.39. First is the issue of regulatory parity: Because many swaps will be executed on trading platforms, they should be subject to the same recordkeeping requirements as futures and commodity options. Moreover, these recordkeeping rules are fundamental to the Commission's efforts to maintain an orderly marketplace and to remain informed about market positions.

c. Amendments to Regulation 1.35 (Records of Oral Communications)

The proposed amendments to regulation 1.35 would newly require FCMs, RFEDs, IBs, and DCM and SEF members to comply with regulation 1.35 for any swap transactions into which they enter. The benefit of this amendment is significant because it requires these registrants to perform the same recordkeeping functions for swaps that they already perform for futures transactions, which protect the integrity and efficiency of the markets, market participants, and the public at large by ensuring that these records are available in the event of customer disputes, routine compliance examinations, and regulatory investigations.

Notwithstanding the potential costs described above that could be incurred by FCMs, RFEDs, IBs, and DCM and SEF members in complying with the proposed amendments that would newly require them to record all oral communications that lead to the execution of a transaction in a commodity interest or cash commodity, the Commission believes the benefits of the proposed amendments are significant and important.

First, the Commission believes that the proposed amendments will enhance the protection of market participants and the public by increasing the probability of timely successful enforcement of the CEA and Commission regulations, particularly in cases involving suspected fraud, market manipulation and/or false reporting, by deterring market abuses, and additionally by reducing the expected value to be gained from committing market abuse. The Commission believes that increasing the quantity and quality of contemporaneous records that affected persons must retain, as provided under the proposed amendments, will protect market participants and the public from harm by wrongdoers. Such increases in the quantity and quality of contemporaneous records will enable the Commission to more fully and accurately establish the knowledge and intent of wrongdoers at the time of their wrongful acts. The Commission believes that the enhanced protection of market participants and the public outweighs the costs that may be borne by persons under the proposed amendments who do not already maintain oral communications.

Second, the Commission anticipates that the proposed amendments will lead to increased market confidence and greater price efficiency by reducing the expected value to be gained from committing market abuse, thereby deterring such inefficient acts. By requiring the recording of oral communications, which could be evidence of anti-competitive behavior, the proposed amendments will discourage anti-competitive behavior, thereby enhancing competition.

Third, the Commission believes that the proposed amendments, by increasing the probability of timely successful enforcement of the CEA and Commission regulations, and by deterring market abuses, will benefit the financial integrity of futures markets and lead to more effective price discovery. The Commission anticipates that such benefits will be achieved through the resultant enhanced investigative capabilities in cases involving suspected fraud, market manipulation, and/or false reporting.

Fourth, the Commission believes that the enhanced investigative and enforcement capabilities made possible under the proposed amendments ultimately will decrease the likelihood that incidents of wrongdoing, particularly with respect to cases of fraud, market manipulation and/or false reporting, will go undetected or unproven. The Commission believes that the cumulative impact of the proposed amendments will result in more successful prosecutions of wrongdoing under the CEA as well as

[101] The Commission preliminarily has determined that any additional cost imposed by the recordkeeping requirements of proposed regulation 23.202(a)(1) (which has an analogous requirement for SDs and MSPs relating to retention of oral and written communications that lead to the execution of swaps) "would be minimal because the information and data required to be recorded is information and data a prudent swap dealer or major swap participant would already maintain during the ordinary course of its business," and "[m]oreover, most swap dealers and major swap participants have adequate, existing resources and recordkeeping structures that are capable of adjusting to the new regulatory framework without material diversion of resources away from commercial operations." *See* Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 FR 76666, 76673, Dec. 9, 2010.

[102] 75 FR 76666, Dec. 9, 2010.

fewer market abuses being committed, which will benefit both market participants and the general public.

After considering these factors, the Commission has determined to propose the amendments described above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit, with their comment letters, any data that quantifies the costs and benefits of the proposed amendments.

Other than the foregoing, these proposed rules do not impose any substantive regulatory obligations on any person. Rather, the Commission is adopting technical amendments to conform to the Dodd-Frank Act. Accordingly, there are no quantifiable costs associated with this rulemaking other than those discussed above. The sole qualitative benefit associated with this rulemaking, other than as discussed above, is accuracy.

List of Subjects

17 CFR Part 1

Agricultural commodity, Agriculture, Brokers, Committees, Commodity futures, Conflicts of interest, Consumer protection, Definitions, Designated contract markets, Directors, Major swap participants, Minimum financial requirements for intermediaries, Reporting and recordkeeping requirements, Swap dealers.

17 CFR Part 5

Bulk transfers, Commodity pool operators, Commodity trading advisors, Consumer protection, Customer's money, Securities and property, Definitions, Foreign exchange, Minimum financial and reporting requirements, Prohibited transactions in retail foreign exchange, Recordkeeping requirements, Retail foreign exchange dealers, Risk assessment, Special calls, Trading practices.

17 CFR Part 7

Commodity futures, Consumer protection, Registered entity.

17 CFR Part 8

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements, Electronic trading facility.

17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements, Grandfather relief order.

17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements, Grandfather relief order.

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission, Electronic trading facility, Eligible commercial entities, Eligible contract participants, Federal financial regulatory authority, Principal-to-principal, Special calls, Systemic market event.

17 CFR Part 41

Brokers, Reporting and recordkeeping requirements, Security futures products.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organizations and functions (Government agencies).

17 CFR Part 145

Confidential business information, Freedom of information.

17 CFR Part 155

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 166

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Swaps.

For the reasons stated in the preamble, under the authority of 7 U.S.C. 1 *et seq.,* the Commodity Futures Trading Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as set forth below:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Amend § 1.3 by:

a. Revising paragraphs (a), (b), (c), (d), (e), (g), (h), (k), (n), (p), (q), (r), (s), (t), (x), (y) introductory text, (y)(1), (y)(2) introductory text, (y)(2)(iii)(B), (y)(2)(iii)(C), (y)(2)(v)(B), (y)(2)(v)(C), (y)(2)(vii), (y)(2)(viii), (z)(1), (aa)(1)(i), (aa)(2)(i), (aa)(5), (bb), (cc), (ee), (ff), (gg), (ii), (kk), (mm)(1), (mm)(2) introductory text, (mm)(2)(i), (nn), (oo), (pp), (rr)(2), (ss), (tt), (vv), (xx), and (yy);

b. Removing and reserving paragraphs (jj) and (uu); and

c. Adding paragraphs (zz), (aaa), (bbb), (ccc), (ddd), (eee), (fff), (ggg), (hhh), (iii), (jjj), (kkk), and (lll), to read as follows:

§ 1.3 Definitions.

(a) *Board of Trade.* This term means an organized exchange or other trading facility.

(b) *Business day.* This term means any day other than a Sunday or holiday. In all notices required by the Act or by the rules and regulations in this chapter to be given in terms of business days the rule for computing time shall be to exclude the day on which notice is given and include the day on which shall take place the act of which notice is given.

(c) *Clearing member.* This term means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market.

(d) *Clearing organization.* This term means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any designated contract market.

(e) *Commodity.* This term means and includes wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, millfeeds, butter, eggs, Irish potatoes, wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by the first section of Pub. L. 85–839) and motion picture box office receipts (or any index, measure, value or data related to such receipts), and all services, rights and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.

* * * * *

(g) *Institutional customer.* This term has the same meaning as "eligible contract participant" as defined in section 1a(18) of the Act.

(h) *Contract market; designated contract market.* These terms mean a board of trade designated by the Commission as a contract market under

the Act or in accordance with the provisions of part 38 of this chapter.

* * * * *

(k) *Customer.* This term means any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any commodity interest; *Provided, however,* an owner or holder of a proprietary account as defined in paragraph (y) of this section shall not be deemed to be a customer within the meaning of section 4d of the Act, the regulations that implement sections 4d and 4f of the Act and § 1.35, and such an owner or holder of such a proprietary account shall otherwise be deemed to be a customer within the meaning of the Act and §§ 1.37 and 1.46 and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the Act.

* * * * *

(n) *Floor broker.* This term means any person:

(1) Who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

(i) Any commodity for future delivery, security futures product, or swap; or

(ii) Any commodity option authorized under section 4c of the Act; or

(2) Who is registered with the Commission as a floor broker.

* * * * *

(p) *Futures commission merchant.* This term means:

(1) Any individual, association, partnership, corporation, or trust—

(i) Who is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery; a security futures product; a swap; any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; a commodity option authorized under section 4c of the Act; a leverage transaction authorized under section 19 of the Act; or acting as a counterparty in any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act and

(ii) Who, in connection with any of these activities accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; and

(2) Any person that is registered as a futures Commission merchant.

(q) *Member.* This term means:

(1) An individual, association, partnership, corporation, or trust—

(i) Owning or holding membership in, or admitted to membership representation on, a registered entity; or

(ii) Having trading privileges on a registered entity.

(2) A participant in an alternative trading system that is designated as a contract market pursuant to section 5f of the Act is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

(r) *Net equity.* (1) For futures and commodity option positions, this term means the credit balance which would be obtained by combining the margin balance of any person with the net profit or loss, if any, accruing on the open futures or commodity option positions of such person.

(2) For swap positions other than commodity option positions, this term means the credit balance which would be obtained by combining the margin balance of any person with the net profit or loss, if any, accruing on the open swap positions of such person.

(s) *Net deficit.* (1) For futures and commodity option positions, this term means the debit balance which would be obtained by combining the margin balance of any person with the net profit or loss, if any, accruing on the open futures or commodity option positions of such person.

(2) For swap positions other than commodity option positions, this term means the debit balance which would be obtained by combining the margin balance of any person with the net profit or loss, if any, accruing on the open swap positions of such person.

(t) *Open positions.* This term means:

(1) Contracts of purchase or sale of any commodity made by or for any person on or subject to the rules of a board of trade for future delivery during a specified month or delivery period that have neither been fulfilled by delivery nor been offset by other contracts of purchase or sale in the same commodity and delivery month;

(2) Commodity option transactions that have not expired, been exercised, or offset; and

(3) Swaps that have neither expired nor been terminated.

* * * * *

(x) *Floor trader.* This term means any person:

(1) Who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account –

(i) Any commodity for future delivery, security futures product, or swap; or

(ii) Any commodity option authorized under section 4c of the Act; or

(2) Who is registered with the Commission as a floor trader.

(y) *Proprietary account.* This term means a commodity futures, commodity option, or swap trading account carried on the books and records of an individual, a partnership, corporation or other type of association:

(1) For one of the following persons, or

(2) Of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons:

* * * * *

(iii) * * *

(B) The handling of the trades of customers or customer funds of such partnership,

(C) The keeping of records pertaining to the trades of customers or customer funds of such partnership, or

* * * * *

(v) * * *

(B) The handling of the trades of customers or customer funds of such individual, partnership, corporation or association,

(C) The keeping of records pertaining to the trades of customers or customer funds of such individual, partnership, corporation or association, or

* * * * *

(vii) A business affiliate that directly or indirectly controls such individual, partnership, corporation or association; or

(viii) A business affiliate that, directly or indirectly is controlled by or is under common control with, such individual, partnership, corporation or association. *Provided, however,* That an account owned by any shareholder or member of a cooperative association of producers, within the meaning of section 6a of the Act, which association is registered as a futures commission merchant and carries such account on its records, shall be deemed to be an account of a customer and not a proprietary account of such association, unless the shareholder or member is an officer, director or manager of the association.

(z) *Bona fide hedging transactions and positions*—(1) *General definition.* (i) Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are

economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(A) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising, or

(B) The potential change in the value of liabilities which a person owns or anticipates incurring, or

(C) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.

(ii) Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraph (z)(2) and (3) of this section have been satisfied.

* * * * *

(aa) * * *

(1) * * *

(i) The solicitation or acceptance of customers' orders (other than in a clerical capacity) or

* * * * *

(2) * * *

(i) The solicitation or acceptance of customers' orders (other than in a clerical capacity) or

* * * * *

(5) A leverage transaction merchant as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation or acceptance of leverage customers' orders (other than in a clerical capacity) for leverage transactions as defined in § 31.4(x) of this chapter, or

(ii) The supervision of any person or persons so engaged.

(bb)(1) *Commodity trading advisor.* This term means any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; any commodity option authorized under section 4c of the Act; any leverage transaction authorized under section 19 of the Act; any person registered with the Commission as a commodity trading advisor; or any person, who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing. The term does not include any bank or trust company or any person acting as an employee thereof, any news reporter, news columnist, or news editor of the print or electronic media or any lawyer, accountant, or teacher, any floor broker or futures commission merchant, the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, the named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, any contract market, and such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: *Provided,* That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *Provided further,* That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.

(2) *Client.* This term, as it relates to a commodity trading advisor, means any person:

(i) To whom a commodity trading advisor provides advice, for compensation or profit, either directly or through publications, writings, or electronic media, as to the value of, or the advisability of trading in, any contract of sale of a commodity for future delivery, security futures product or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; any commodity option authorized under section 4c of the Act; any leverage transaction authorized under section 19 of the Act; or

(ii) To whom, for compensation or profit, and as part of a regular business, the commodity trading advisor issues or promulgates analyses or reports concerning any of the activities referred to in paragraph (bb)(2)(i) of this section. The term "client" includes, without limitation, any subscriber of a commodity trading advisor.

(cc) *Commodity pool operator.* This term means any person engaged in a business which is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any commodity for future delivery, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; any commodity option authorized under section 4c of the Act; any leverage transaction authorized under section 19 of the Act; or any person who is registered with the Commission as a commodity pool operator, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

* * * * *

(ee) *Self-regulatory organization.* This term means a contract market (as defined in § 1.3(h)), a swap execution facility (as defined in § 1.3(kkk)), a derivatives clearing organization (as defined in section 1a(15) of the Act), or a registered futures association under section 17 of the Act.

(ff) *Designated self-regulatory organization.* This term means:

(1) Self-regulatory organization of which a futures commission merchant, an introducing broker, a leverage transaction merchant, a retail foreign exchange dealer, a swap dealer, or a major swap participant is a member; or

(2) If a Commission registrant other than a leverage transaction merchant is a member of more than one self-regulatory organization and such registrant is the subject of an approved plan under § 1.52 of this part, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such registrant for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the registrant is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such registrant; or

(3) If a leverage transaction merchant is a member of more than one self-regulatory organization and such leverage transaction merchant is the

subject of an approved plan under § 31.28 of this chapter, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations of which the leverage transaction merchant is a member, and for receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements from such leverage transaction merchant.

(gg) *Customer funds.* This term means all money, securities, and property received by a futures commission merchant or by a clearing organization from, for, or on behalf of, customers:

(1) To margin, guarantee, or secure contracts for future delivery or swaps (other than commodity options) on or subject to the rules of a contract market, swap execution facility, or derivatives clearing organization, as the case may be, and all money accruing to such customers as the result of such contracts; and

(2) In connection with a commodity option transaction on or subject to the rules of a contract market, swap execution facility, or derivatives clearing organization, as the case may be:

(i) To be used as a premium for the purchase of a commodity option transaction for a customer;

(ii) As a premium payable to a customer;

(iii) To guarantee or secure performance of a commodity option by a customer; or

(iv) Representing accruals (including, for purchasers of a commodity option for which the full premium has been paid, the market value of such commodity option) to a customer.

(3) Notwithstanding paragraphs (gg)(1) and (2) of this section, the term customer funds shall exclude money, securities or property held to margin, guarantee or secure security futures products held in a securities account, and all money accruing as the result of such security futures products.

* * * * *

(ii) *Premium.* This term means the amount agreed upon between the purchaser and seller, or their agents, for the purchase or sale of a commodity option.

(jj) [Reserved]

(kk) *Strike price.* This term means the price, per unit, at which a person may purchase or sell the commodity, swap or contract of sale of a commodity for future delivery that is the subject of a commodity option: *Provided,* That for purposes of § 1.17, the term strike price means the total price at which a person may purchase or sell the commodity, swap, or contract of sale of a commodity for future delivery that is the subject of a commodity option (*i.e.,* price per unit times the number of units).

* * * * *

(mm) * * *

(1) Any person who, for compensation or profit, whether direct or indirect,

(i) Is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; any commodity option transaction authorized under section 4c; or any leverage transaction authorized under section 19; or who is registered with the Commission as an introducing broker; and

(ii) Does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(2) The term introducing broker shall not include:

(i) Any futures commission merchant, floor broker, associated person, or associated person of a swap dealer or major swap participant acting in its capacity as such, regardless of whether that futures commission merchant, floor broker, or associated person is registered or exempt from registration in such capacity;

* * * * *

(nn) *Guarantee agreement.* This term means an agreement of guarantee in the form set forth in part B or C of Form 1–FR, executed by a registered futures commission merchant or retail foreign exchange dealer, as appropriate, and by an introducing broker or applicant for registration as an introducing broker on behalf of an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement set forth in § 1.17(a)(1)(iii).

(oo) *Leverage transaction merchant.* This term means and includes any individual, association, partnership, corporation, trust or other person that is engaged in the business of offering to enter into, entering into or confirming the execution of leverage contracts, or soliciting or accepting orders for leverage contracts, and who accepts leverage customer funds (or extends credit in lieu thereof) in connection therewith.

(pp) *Leverage customer funds.* This term means all money, securities and property received, directly or indirectly by a leverage transaction merchant from, for, or on behalf of leverage customers to margin, guarantee or secure leverage contracts and all money, securities and property accruing to such customers as the result of such contracts, or the customers' leverage equity. In the case of a long leverage transaction, profit or loss accruing to a leverage customer is the difference between the leverage transaction merchant's current bid price for the leverage contract and the ask price of the leverage contract when entered into. In the case of a short leverage transaction, profit or loss accruing to a leverage customer is the difference between the bid price of the leverage contract when entered into and the leverage transaction merchant's current ask price for the leverage contract.

* * * * *

(rr) * * *

(2) In the case of foreign options customers in connection with open foreign options transactions, money, securities and property representing premiums paid or received, plus any other funds required to guarantee or secure open transactions plus or minus any unrealized gain or loss on such transactions.

(ss) *Foreign board of trade.* This term means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures, foreign options, or foreign swaps are entered into.

(tt) *Electronic signature.* This term means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(uu) [Reserved]

(vv) *Futures account.* This term means an account that is maintained in accordance with the segregation requirements of section 4d(a) of the Act and the rules thereunder.

* * * * *

(xx) *Foreign broker.* This term means any person located outside the United States, its territories or possessions who is engaged in soliciting or in accepting orders only from persons located outside the United States, its territories or possessions for the purchase or sale of any commodity interest transaction on or subject to the rules of any designated contract market or swap

execution facility and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(yy) *Commodity interest.* This term means:

(1) Any contract for the purchase or sale of a commodity for future delivery;

(2) Any contract, agreement or transaction subject to a Commission regulation under section 4c or 19 of the Act;

(3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; and

(4) Any swap as defined in the Act, the Commission's regulations, a Commission order or interpretation, or a joint interpretation or order issued by the Commission and the Securities and Exchange Commission.

(zz) *Associated person of a swap dealer or major swap participant.* This term means any person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the solicitation or acceptance of swaps, or the supervision of any person or persons so engaged. *Provided, however,* That the term does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

(aaa) *Confirmation.* When used in reference to a futures commission merchant, introducing broker, or commodity trading advisor, this term means documentation (electronic or otherwise) that memorializes specified terms of a transaction executed on behalf of a customer. When used in reference to a swap dealer or major swap participant, this term means documentation (electronic or otherwise) that memorializes specified terms of a transaction executed opposite a counterparty.

(bbb) *Electronic trading facility.* This term means a trading facility that—

(1) Operates by means of an electronic or telecommunications network; and

(2) Maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

(ccc) *Order.* This term means an instruction or authorization provided by a customer to a futures commission merchant, introducing broker or commodity trading advisor regarding trading in a commodity interest on behalf of the customer.

(ddd) *Organized exchange.* This term means a trading facility that—

(1) Permits trading—

(i) By or on behalf of a person that is not an eligible contract participant; or

(ii) By persons other than on a principal-to-principal basis; or

(2) Has adopted (directly or through another nongovernmental entity) rules that—

(i) Govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

(ii) Include disciplinary sanctions other than the exclusion of participants from trading.

(eee) *Prudential regulator.* This term has the meaning given to the term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant. The term also includes the Federal Deposit Insurance Corporation, with respect to any financial company as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any insured depository institution under the Federal Deposit Insurance Act, and with respect to each affiliate of any such company or institution.

(fff) *Registered entity.* This term means:

(1) A board of trade designated as a contract market under section 5 of the Act;

(2) A derivatives clearing organization registered under section 5b of the Act;

(3) A board of trade designated as a contract market under section 5f of the Act;

(4) A swap execution facility registered under section 5h of the Act;

(5) A swap data repository registered under section 21 of the Act; and

(6) With respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

(ggg) *Registrant.* This term means a commodity pool operator; commodity trading advisor; futures commission merchant; introducing broker; leverage transaction merchant; floor broker; floor trader; major swap participant; retail foreign exchange dealer; or swap dealer that is subject to these regulations; or an associated person of any of the foregoing other than an associated person of a swap dealer or major swap participant.

(hhh) *Retail forex customer.* This term means a person, other than an eligible contract participant as defined in section 1a(18) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

(iii) *Swap account.* This term means an account that is maintained in accordance with the segregation requirements of section 4d(f) of the Act and the rules thereunder.

(jjj) *Swap data repository.* This term means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

(kkk) *Swap execution facility.* This term means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(1) Facilitates the execution of swaps between persons; and

(2) Is not a designated contract market.

(lll) *Trading facility.* This term has the meaning set forth in section 1a(51) of the Act.

3. Revise § 1.4 to read as follows:

§ 1.4 Use of electronic signatures, acknowledgments and verifications.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a swap transaction to be acknowledged by a swap dealer or major swap participant or a document to be signed or verified by a customer of a futures commission merchant or introducing broker, a retail forex customer of a retail foreign exchange dealer or futures commission merchant, a pool participant or a client of a commodity trading advisor, or a counterparty of a swap dealer or major swap participant, an electronic signature executed by the customer, retail forex customer, participant, client, counterparty, swap dealer or major swap participant will be sufficient, if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, swap dealer or major swap participant elects generally to accept electronic signatures, acknowledgments or verifications or another Commission rule permits the use of electronic signatures for the

purposes listed above; *Provided, however,* That the electronic signature must comply with applicable Federal laws and other Commission rules; And, *Provided further,* That the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, swap dealer or major swap participant must adopt and use reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

4. Remove and reserve paragraph (a)(1)(ii) of § 1.17 to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) * * *

(ii) [Reserved]

* * * * *

5. Revise § 1.20 to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each registrant shall obtain and retain in its files for the period provided in § 1.31 a written acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of customers and are being held in accordance with the provisions of the Act and this part: *Provided however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the customers of the futures commission merchant which deposited such funds.

(b) All customer funds received by a clearing organization from a member of the clearing organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's customers and all money accruing to such customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such customers, and a clearing organization shall not hold, use or dispose of such customer funds except as belonging to such customers. Such customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the customers of clearing members, segregated as required by the Act and these regulations. The clearing organization shall obtain and retain in its files for the period provided by § 1.31 an acknowledgment from such bank or trust company that it was informed that the customer funds deposited therein are those of customers of its clearing members and are being held in accordance with the provisions of the Act and these regulations.

(c) Each futures commission merchant shall treat and deal with the customer funds of a customer as belonging to such customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided further,* That customer funds may be invested in instruments described in § 1.25.

6. Revise § 1.21 to read as follows:

§ 1.21 Care of money and equities accruing to customers.

All money received directly or indirectly by, and all money and equities accruing to, a futures commission merchant from any clearing organization or from any clearing member or from any member of a contract market incident to or resulting from any trade, contract or commodity option made by or through such futures commission merchant on behalf of any customer shall be considered as accruing to such customer within the meaning of the Act and these regulations. Such money and equities shall be treated and dealt with as belonging to such customer in accordance with the provisions of the Act and these regulations. Money and equities accruing in connection with customers' open trades, contracts, or commodity options need not be separately credited to individual accounts but may be treated and dealt with as belonging undivided to all customers having open trades, contracts, or commodity option positions which if closed would result in a credit to such customers.

7. Revise § 1.22 to read as follows:

§ 1.22 Use of customer funds restricted.

No futures commission merchant shall use, or permit the use of, the customer funds of one customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer. Customer funds shall not be used to carry trades or positions of the same customer other than in commodities or commodity options traded through the facilities of a contract market.

8. Revise § 1.23 to read as follows:

§ 1.23 Interest of futures commission merchant in segregated funds; additions and withdrawals.

The provision in section 4d(a)(2) of the Act and the provision in § 1.20(c), which prohibit the commingling of customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures

commission merchant from having a residual financial interest in the customer funds, segregated as required by the Act and the rules in this part and set apart for the benefit of customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25, as it may deem necessary to ensure any and all customers' accounts from becoming undersegregated at any time. The books and records of a futures commission merchant shall at all times accurately reflect its interest in the segregated funds. A futures commission merchant may draw upon such segregated funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, contract market, clearing organization or other futures commission merchant. Such withdrawal shall not result in the funds of one customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other customer or other person.

9. Revise § 1.24 to read as follows:

§ 1.24 Segregated funds; exclusions therefrom.

Money held in a segregated account by a futures commission merchant shall not include: (a) Money invested in obligations or stocks of any clearing organization or in memberships in or obligations of any contract market; or

(b) Money held by any clearing organization which it may use for any purpose other than to purchase, margin, guarantee, secure, transfer, adjust, or settle the contracts, trades, or commodity options of the customers of such futures commission merchant.

10. Revise § 1.26 to read as follows:

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with § 1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

(b) Each clearing organization which invests money belonging or accruing to customers of its clearing members in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to customers and are segregated as required by the Act and this part. Each clearing organization upon opening such an account shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to customers of clearing members and are being held in accordance with the provisions of the Act and this part. Such acknowledgment shall be retained in accordance with § 1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

11. Revise the introductory text of paragraph (a) in § 1.27 to read as follows:

§ 1.27 Record of investments.

(a) Each futures commission merchant which invests customer funds, and each derivatives clearing organization which invests customer funds of its clearing members' customers, shall keep a record showing the following:

* * * * *

12. Revise § 1.30 to read as follows:

§ 1.30 Loans by futures commission merchants; treatment of proceeds.

Nothing in the regulations in this part shall prevent a futures commission merchant from lending its own funds to customers on securities and property pledged by such customers, or from repledging or selling such securities and property pursuant to specific written agreement with such customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of customers shall be treated and dealt with by a futures commission merchant as belonging to such customers, in accordance with and subject to the provisions of section 4d(a)(2) of the Act and these regulations.

13. Amend § 1.31 by revising paragraphs (a)(1), (a)(2), (b) introductory text, (b)(1)(ii)(D), (b)(2)(i), (b)(2)(ii), (b)(2)(iii), (b)(2)(v)(B), (b)(3)(i), (b)(3)(ii)(A), (b)(3)(ii)(C), (b)(3)(iii)(A), and (b)(4)(i), to read as follows:

§ 1.31 Books and records; keeping and inspection.

(a)(1) All books and records required to be kept by the Act or by these regulations shall be kept in their original form (for paper records) or native file format (for electronic records) for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period; *Provided, however,* That records of any swap or related cash or forward transaction shall be kept until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of five years after such date. All such books and records shall be open to inspection by any representative of the Commission, the United States Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or, in connection with those security-based swap agreements described in section 1a(47)(A)(v) of the Act, the United States Securities and Exchange Commission. For purposes of this section, native file format means an electronic file that exists in the format it was originally created.

(2) Persons required to keep books and records by the Act or by these regulations shall produce such records in a form specified by any representative of the Commission. Such production shall be made, at the expense of the person required to keep the book or record, to a Commission representative upon the representative's request. Instead of furnishing a copy, such person may provide the original book or record for reproduction, which

the representative may temporarily remove from such person's premises for this purpose. All copies or originals shall be provided promptly. Upon request, the Commission representative shall issue a receipt provided by such person for any copy or original book or record received. At the request of the Commission representative, such person shall, upon the return thereof, issue a receipt for any copy or original book or record returned by the representative.

(b) Except as provided in paragraph (d) of this section, books and records required to be kept by the Act or by these regulations may be stored on either "micrographic media" (as defined in paragraph (b)(1)(i) of this section) or "electronic storage media" (as defined in paragraph (b)(1)(ii) of this section) for the required time period under the conditions set forth in this paragraph (b); *Provided, however,* For electronic records, such storage media must preserve the native file format of the electronic records as required by paragraph (a)(1) of this section.

(1) * * *

(ii) * * *

(D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph (b) upon the request of representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act.

(2) * * *

(i) Have available at all times, for examination by representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;

(ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, may request;

(iii) Keep only Commission-required records on the individual medium employed (*e.g.,* a disk or sheets of microfiche);

* * * * *

(v) * * *

(B) The index is available at all times for immediate examination by representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act;

* * * * *

(3) * * *

(i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such approved compatible data processing media as defined in § 15.00(d) of this chapter which any representative of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, may request. Records must use a format and coding structure specified in the request.

(ii) * * *

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act;

* * * * *

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act.

(iii) * * *

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission, the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, all information necessary to access records and indexes maintained on the electronic storage media; or

* * * * *

(4) * * *

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:* * *

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission, the United States Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the United States Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act (the "Representative"), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

* * * * *

14. Revise paragraphs (a)(1) and (a)(2) of § 1.32 to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) * * *

(1) The total amount of customer funds on deposit in segregated accounts on behalf of customers;

(2) The amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such customers; and

* * * * *

15. Amend § 1.33 by:

a. Revising paragraph (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(1)(ii), (a)(2) introductory text, and (a)(2)(v);

b. Adding paragraph (a)(3);

c. Revising paragraph (b) introductory text and paragraph (b)(1), redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), respectively, and adding paragraph (b)(2);

d. Revising redesignated paragraph (b)(3) introductory text, and redesignated paragraphs (b)(3)(i), (b)(4), and (b)(5); and

e. Revising paragraph (d) introductory text to read as follows:

§ 1.33 Monthly and confirmation statements.

(a) *Monthly statements.* Each futures commission merchant must promptly furnish in writing to each customer, and to each foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each commodity futures and foreign futures position—

(i) The open position with prices at which acquired;

(ii) The net unrealized profits or losses in all open positions marked to the market;

* * * * *

(2) For each commodity option position and foreign option position—

* * * * *

(v) A detailed accounting of all financial charges and credits to such customer's account(s) during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign option transactions in accordance with § 30.7 of this chapter received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(3) For each swap position—

(i) All swaps caused to be executed by the futures commission merchant for the customer;

(ii) The net unrealized profits or losses in all swaps marked to the market;

(iii) Any customer funds carried with the futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds received from or disbursed to such customer and realized profits and losses.

(b) *Confirmation statement.* Each futures commission merchant must, not later than the next business day after any commodity interest or commodity option transaction, including any foreign futures or foreign options transactions, furnish to each customer:

(1) A written confirmation of each commodity futures transaction caused to be executed by it for the customer.

(2) A written confirmation of each swap caused to be executed by it for the customer, containing at least the following information:

(i) The unique swap identifier, as required by § 45.4(a) of this chapter, for each swap and date each swap was executed;

(ii) The product name of each swap;

(iii) The price at which the swap was executed;

(iv) The date of maturity for each swap; and

(v) If cleared, the derivatives clearing organization through which it is cleared.

(3) A written confirmation of each commodity option transaction, containing at least the following information:

(i) The customer's account identification number;

* * * * *

(4) Upon the expiration or exercise of any commodity option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the futures or physical position which resulted therefrom including, if applicable, the final trading date of the contract for future delivery underlying the option.

(5) Notwithstanding the provisions of paragraphs (b)(1) through (b)(4) of this section, a commodity interest transaction that is caused to be executed for a commodity pool need be confirmed only to the operator of the commodity pool.

* * * * *

(d) *Controlled accounts.* With respect to any account controlled by any person other than the customer for whom such account is carried, each futures commission merchant shall:

* * * * *

16. Revise § 1.34 to read as follows:

§ 1.34 Monthly record, "point balance".

(a) With respect to commodity futures transactions, each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a statement commonly known as a "point balance," which accrues or brings to the official closing price, or settlement price fixed by the clearing organization, all open positions of customers as of the last business day of each month or of any regular monthly date selected: *Provided, however,* That a futures commission merchant who carries part or all of customers' open positions with other futures commission merchants on an "instruct basis" will be deemed to have met the requirements of this section as to open positions so carried if a monthly statement is prepared which shows that the prices and amounts of such positions long and short in the customers' accounts are in balance with those in the carrying futures commission merchants' accounts, and such statements are retained in accordance with the requirements of § 1.31.

(b) With respect to commodity option transactions, each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a listing in which all open commodity option positions carried for customers are marked to the market. Such listing shall be prepared as of the last business day of each month, or as of any regular monthly date selected, and shall be by put or by call, by underlying contract for future delivery (by delivery month) or underlying physical (by option expiration date), and by strike price.

17. Section 1.35 is revised to read as follows:

§ 1.35 Records of commodity interest and cash commodity transactions.

(a) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets or swap execution facilities.* Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity interests and cash commodities. Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall retain the required records in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized

representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, which have been prepared in the course of its business of dealing in commodity interests and cash commodities, and all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions in a commodity interest or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media. Each transaction record shall be maintained as a separate electronic file identifiable by transaction and counterparty. Among such records each member of a designated contract market or swap execution facility must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission, the designated contract market or the swap execution facility. For purposes of this section, such documents are referred to as "original source documents."

(b) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets and swap execution facilities: Recording of customers' orders.* (1) Each futures commission merchant, each retail foreign exchange dealer, each introducing broker, and each member of a designated contract market or swap execution facility receiving a customer's order that cannot immediately be entered into a trade matching engine shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (b)(5) of this section, and order number, and shall record thereon, by time stamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for commodity option orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a designated contract market who on the floor of such designated contract market receives a customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such designated contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (b)(5) of this section, and order number and shall record thereon, by time stamp or other timing device, the date and time, to the nearest minute, the order is received.

(ii) Except as provided in paragraph (b)(3) of this section:

(A) Each member of a designated contract market who on the floor of such designated contract market receives an order from another member present on the floor which is not in the form of a written record shall, immediately upon receipt of such order, prepare a written record of the order or obtain from the member who placed the order a written record of the order, in non-erasable ink, including the account identification and order number and shall record thereon, by time stamp or other timing device, the date and time, to the nearest minute, the order is received; or

(B) When a member of a designated contract market present on the floor places an order, which is not in the form of a written record, for his own account or an account over which he has control, with another member of such designated contract market for execution:

(*1*) The member placing such order immediately upon placement of the order shall record the order and time of placement to the nearest minute on a sequentially numbered trading card maintained in accordance with the requirements of paragraph (f) of this section;

(*2*) The member receiving and executing such order immediately upon execution of the order shall record the time of execution to the nearest minute on a trading card or other record maintained pursuant to the requirements of paragraph (f) of this section; and

(*3*) The member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then must submit together both of the trading cards or other records documenting such trade to designated contract market personnel or the clearing member.

(3)(i) The requirements of paragraph (b)(2)(ii) of this section will not apply if a designated contract market maintains in effect rules which provide for an exemption where:

(A) A member of a designated contract market places with another member of such designated contract market an order that is part of a spread transaction;

(B) The member placing the order personally executes one or more legs of the spread; and

(C) The member receiving and executing such order immediately upon execution of the order records the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (f) of this section.

(4) Each member of a designated contract market reporting the execution from the floor of the designated contract market of a customer's order or the order of another member of the designated contract market received in accordance with paragraphs (b)(2)(i) or (b)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (b)(5) of this section, and order number, by time stamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a designated contract market shall submit the written records of customer orders or orders from other designated contract market members to designated contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph. The execution price and other information reported on the order tickets must be written in nonerasable ink.

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders executed on designated contract markets or swap execution facilities need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (b)(5)(i) through (v) of this section are met. Specific customer account identifiers for accounts included in bunched orders involving swaps need not be included in confirmations or acknowledgments provided by swap dealers or major swap participants pursuant to § 23.501(a) of this chapter if the requirements of paragraphs (b)(5)(i) through (v) of this section are met.

(i) *Eligible account managers for orders executed on designated contract markets or swap execution facilities.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for

trades executed on designated contract markets or swap execution facilities:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation;

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter;

(E) A futures commission merchant registered with the Commission pursuant to the Act; or

(F) An introducing broker registered with the Commission pursuant to the Act.

(ii) *Eligible account managers for orders executed bilaterally.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed bilaterally:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) of this chapter;

(B) A futures commission merchant registered with the Commission pursuant to the Act; or

(C) An introducing broker registered with the Commission pursuant to the Act.

(iii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable and consistent with § 155.3(a)(1) and § 155.4(a)(1) of this chapter, any account in which the account manager has an interest.

(iv) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event no later than the following times: For cleared trades, account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(v) *Records.* (A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (b)(5)(iii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (b)(5)(iv) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants, introducing brokers, or commodity trading advisors that execute orders or that carry accounts eligible for post-execution allocation, and members of designated contract markets or swap execution facilities that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (b)(5)(v)(A) or (b)(5)(v)(B) of this section, the Commission may inform in writing any designated contract market, swap execution facility, swap dealer, or major swap participant, and that designated contract market, swap execution facility, swap dealer, or major swap participant shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchant shall accept orders for execution on any designated contract market, swap execution facility, or bilaterally from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (b)(5)(v)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

(c)(1) *Futures commission merchants, introducing brokers, and members of designated contract markets and swap execution facilities.* Upon request of the designated contract market or swap execution facility, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a designated contract market or swap execution facility shall request from its customers and, upon receipt thereof, provide to the requesting body documentation of cash transactions underlying exchanges of futures or swaps for cash commodities or exchanges of futures or swaps in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a designated contract market or swap execution facility shall create, retain, and produce upon request of the designated contract market or swap execution facility, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures or swaps for cash commodities or exchanges of futures or swaps in connection with cash commodity transactions.

(3) *Documentation.* For the purposes of this paragraph, documentation means those documents customarily generated

in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

(d) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* Each futures commission merchant, each retail foreign exchange dealer, and each member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility and, for purposes of paragraph (d)(3) of this section, each introducing broker, shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer all charges against and credits to such customer's account, including but not limited to customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including proprietary accounts):

(i) All commodity futures transactions executed for such account, including the date, price, quantity, market, commodity and future;

(ii) All retail forex transactions executed for such account, including the date, price, quantity, and currency;

(iii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission and fees; and

(iv) All swap transactions executed for such account, including the date, price, quantity, market, commodity, swap, and, if cleared, the derivatives clearing organization; and

(3) A record or journal which will separately show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person who whom such transaction was made;

(iii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom the transaction was made;

(iv) All swap transactions executed on that day, including the date, price, quantity, market, commodity, swap, the person for whom such transaction was made, and, if cleared, the derivatives clearing organization; and

(v) In the case of an introducing broker, the record or journal required by this paragraph (d)(3) shall also include the futures commission merchant or retail foreign exchange dealer carrying the account for which each commodity futures, retail forex, commodity option, and swap transaction was executed on that day. *Provided, however,* that where reproductions on microfilm, microfiche or optical disk are substituted for hard copy in accordance with the provisions of § 1.31(b) of this part, the requirements of paragraphs (d)(1) and (d)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity futures, retail forex, commodity option, or swap books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request of any representatives of the Commission or the U.S. Department of Justice.

(e) *Members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* In the daily record or journal required to be kept under paragraph (d)(3) of this section, each member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility shall also show the floor broker or floor trader executing each transaction, the opposite floor broker or floor trader, and the opposite clearing member with whom it was made.

(f) *Members of designated contract markets.* (1) Each member of a designated contract market who, in the place provided by the designated contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery, commodity option, or swap on or subject to the rules of such designated contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, the name of the clearing member, transaction date, time, quantity, and, as applicable, underlying commodity, contract for future delivery, swap or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, and strike price. Such trading card or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member (if such opposite clearing member is made known to the member).

(2) Each member of a designated contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades; *Provided, however,* That if lines remain after the last execution recorded on a trading card, the remaining lines must be marked through.

(3) Each member of a designated contract market must identify on his or her trading cards the purchases and sales executed during the opening and closing periods designated by the designated contract market.

(4) Trading cards prepared by a member of a designated contract market must contain:

(i) Pre-printed member identification or other unique identifying information which would permit the trading cards of one member to be distinguished from those of all other members;

(ii) Pre-printed sequence numbers to permit the intra-day sequencing of the cards; and

(iii) Unique and pre-printed identifying information which would distinguish each of the trading cards prepared by the member from other such trading cards for no less than a one-week period.

(5) Trading cards prepared by a member of a designated contract market and submitted pursuant to paragraph (f)(7)(i) of this section must be time-stamped promptly to the nearest minute upon collection by either the designated contract market or the relevant clearing member.

(6) Each member of a designated contract market shall be accountable for all trading cards prepared in exact numerical sequence, whether or not

such trading cards are relied on as original source documents.

(7) Trading records prepared by a member of a designated contract market must:

(i) Be submitted to designated contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 30 minutes, commencing with the beginning of each trading session. The time period for submission of trading records after the close of trading in each market shall not exceed 15 minutes from the close. Such documents should nevertheless be submitted as often as is practicable to the designated contract market or relevant clearing member; and

(ii) Be completed in non-erasable ink. A member may correct any errors by crossing out erroneous information without obliterating or otherwise making illegible any of the originally recorded information. With regard to trading cards only, a member may correct erroneous information by rewriting the trading card; *Provided, however,* that the member must submit a ply of the trading card, or in the absence of plies the original trading card, that is subsequently rewritten in accordance with the collection schedule for trading cards and *provided further,* that the member is accountable for any trading card that subsequently is rewritten pursuant to paragraph (f)(6) of this section.

(8) Each member of a designated contract market must use a new trading card at the beginning of each designated 30-minute interval (or such lesser interval as may be determined appropriate) or as may be required pursuant hereto.

(g) *Members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* (1) Each member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility shall maintain a single record which shall show for each futures, option or swap trade: the transaction date, time, quantity, and, as applicable, underlying commodity, contract for future delivery, swap or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer types. The customer type indicator shall show, with respect to each person executing the trade, whether such person:

(i) Was trading for his or her own account, or an account for which he or she has discretion;

(ii) Was trading for his or her clearing member's house account;

(iii) Was trading for another member present on the exchange floor, or an account controlled by such other member; or

(iv) Was trading for any other type of customer.

(2) The record required by this paragraph (g) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with the provisions of subpart J of part 38 of this chapter, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (g) shall be maintained in a format and coding structure approved by the Commission—

(i) In hard copy or on microfilm as specified in § 1.31, and

(ii) For 60 days in computer-readable form on compatible magnetic tapes or discs.

18. Revise § 1.36 to read as follows:

§ 1.36 Record of securities and property received from customers.

(a) Each futures commission merchant and each retail foreign exchange dealer shall maintain, as provided in § 1.31, a record of all securities and property received from customers or retail forex customers in lieu of money to margin, purchase, guarantee, or secure the commodity interests of such customers or retail forex customers. Such record shall show separately for each customer or retail forex customer: A description of the securities or property received; the name and address of such customer or retail forex customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated or held; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such customer or retail forex customer, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission merchant deposits with a clearing organization, directly or with a bank or trust company acting as custodian for such clearing organization, securities and/or property which belong to a particular customer, such futures commission merchant shall obtain written acknowledgment from such clearing organization that it was informed that such securities or property belong to customers of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in § 1.31.

(b) Each clearing organization which receives from members securities or property belonging to particular customers of such members in lieu of money to margin, purchase, guarantee, or secure the commodity interests of such customers, or receives notice that any such securities or property have been received by a bank or trust company acting as custodian for such clearing organization, shall maintain, as provided in § 1.31, a record which will show separately for each member, the dates when such securities or property were received, the identity of the depositories or other places where such securities or property are segregated, the dates such securities or property were returned to the member, or otherwise disposed of, together with the facts and circumstances of such other disposition including the authorization therefor.

19. Revise § 1.37 to read as follows:

§ 1.37 Customer's name, address, and occupation recorded; record of guarantor or controller of account.

(a) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each commodity interest account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each such commodity option account, the records kept by such futures commission merchant, introducing broker, and member of a contract market must also show the name of the person who has solicited and is responsible for each customer's account or assign account numbers in such a manner to identify that person.

(b) As of the close of the market each day, each futures commission merchant which carries an account for another futures commission merchant, foreign broker (as defined in § 15.00 of this chapter), member of a contract market, or other person, on an omnibus basis shall maintain a daily record for each such omnibus account of the total open long contracts and the total open short contracts in each future and in each swap and, for commodity option transactions, the total open put options purchased, the total open put options granted, the total open call options

purchased, and the total open call options granted for each commodity option expiration date.

(c) Each designated contract market and swap execution facility shall keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility or exchange. In addition, upon request, a designated contract market or swap execution facility shall provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a designated contract market or swap execution facility on which transactions in futures, swaps or options (other than swaps) contracts of foreign traders are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraph (a) of this section.

20. Amend § 1.39 by revising paragraph (a) introductory text, (a)(1)(ii), (a)(2), (a)(3), (a)(4), (b) introductory text, (b)(2), and (c), to read as follows:

§ 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.

(a) *Conditions and requirements.* A member of a contract market or a swap execution facility who shall have at the same time both buying and selling orders of different principals for the same swap, commodity for future delivery in the same delivery month or the same option (both puts or both calls, with the same underlying contract for future delivery or the same underlying physical, expiration date and strike price) may execute such orders for and directly between such principals at the market price, if in conformity with written rules of such contract market or swap execution facility which have been approved by or self-certified to the Commission, and:

(1) * * *

(ii) When in non-pit trading in swaps or contracts of sale for future delivery, bids and offers are posted on a board, such member:

(A) Pursuant to such buying order posts a bid on the board and, incident to the execution of such selling order, accepts such bid and all other bids posted at prices equal to or higher than the bid posted by him, or

(B) Pursuant to such selling order posts an offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him;

(2) Such member executes such orders in the presence of an official representative of such contract market designated to observe such transactions or on a system or platform accessible by an official representative of such swap execution facility and, by appropriate descriptive words or symbol, clearly identifies all such transactions on his trading card or other record, made at the time of execution, and notes thereon the exact time of execution and promptly presents or makes available said record to such official representative for verification and initialing, as appropriate;

(3) Such swap execution facility or contract market keeps a record in permanent form of each such transaction showing all transaction details required to be captured by the Act, Commission rule or regulation; and

(4) Neither the futures commission merchant, other registrant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary.

(b) *Large order execution procedures.* A member of a contract market or a swap execution facility may execute simultaneous buying and selling orders of different principals directly between the principals in compliance with Commission regulations and large order execution procedures established by written rules of the contract market or swap execution facility that have been approved by or self-certified to the Commission: *Provided,* That, to the extent such large order execution procedures do not meet the conditions and requirements of paragraph (a) of this section, the contract market or swap execution facility has petitioned the Commission for, and the Commission has granted, an exemption from the conditions and requirements of paragraph (a) of this section. Any such petition must be accompanied by proposed contract market or swap execution facility rules to implement the large order execution procedures. The petition shall include:

* * * * *

(2) A description of a special surveillance program that would be followed by the contract market or swap execution facility in monitoring the large order execution procedures.

* * * * *

(c) *Not deemed filling orders by offset.* The execution of orders in compliance with the conditions herein set forth will not be deemed to constitute the filling of orders by offset within the meaning of section 4b(a) of the Act.

21. Revise § 1.40 to read as follows:

§ 1.40 Crop, market information letters, reports; copies required.

Each futures commission merchant, each retail foreign exchange dealer, each introducing broker, each member of a contract market and each eligible contract participant with trading privileges on a swap execution facility shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, telecommunication, or report published or given general circulation by such futures commission merchant, retail foreign exchange dealer, introducing broker, member or eligible contract participant which concerns crop or market information or conditions that affect or tend to affect the price of any commodity, including any exchange rate, and the true source of or authority for the information contained therein.

§ 1.44 [Removed and Reserved]

22. Remove and reserve § 1.44.

23. Amend § 1.46 by revising paragraph (a)(1) introductory text and paragraphs (a)(1)(iii), (a)(1)(iv), (a)(2)(iii), (a)(2)(iv), and (b), to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* (1) Except with respect to purchases or sales which are for omnibus accounts, or where the customer or account controller has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated contract market:

* * * * *

(iii) Purchases a put or call option for the account of any customer when the account of such customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that purchased; or

(iv) Sells a put or call option for the account of any customer when the account of such customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold—shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such

customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant by an introducing broker and the names of the futures commission merchant and introducing broker.

(2) * * *

(iii) Purchases a put or call option involving foreign currency for the account of any customer when the account of such customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or

(iv) Sells a put or call option involving foreign currency for the account of any customer when the account of such customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold—shall immediately apply such purchase or sale against such previously held opposite transaction, and shall promptly furnish such retail forex customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant or retail foreign exchange dealer by an introducing broker and the names of the futures commission merchant or retail foreign exchange dealer, and the introducing broker.

(b) *Close-out against oldest open position.* In all instances wherein the short or long futures, retail forex transaction or option position in such customer's or retail forex customer's account immediately prior to such offsetting purchase or sale is greater than the quantity purchased or sold, the futures commission merchant or retail foreign exchange dealer shall apply such offsetting purchase or sale to the oldest portion of the previously held short or long position: *Provided,* That upon specific instructions from the customer the offsetting transaction shall be applied as specified by the customer without regard to the date of acquisition of the previously held position; and *Provided, further,* That a futures commission merchant or retail foreign exchange dealer, if permitted by the rules of a registered futures association, may offset, at the customer's request, retail forex transactions of the same size, even if the customer holds other transactions of a different size, but in each case must offset the transaction against the oldest transaction of the same size. Such instructions may also be accepted from any person who, by power of attorney or otherwise, actually directs trading in the customer's or retail forex customer's account unless the person directing the trading is the futures commission merchant or retail foreign exchange dealer (including any partner thereof), or is an officer, employee, or agent of the futures commission merchant or retail foreign exchange dealer. With respect to every such offsetting transaction that, in accordance with such specific instructions, is not applied to the oldest portion of the previously held position, the futures commission merchant or retail foreign exchange dealer shall clearly show on the statement issued to the customer or retail forex customer in connection with the transaction, that because of the specific instructions given by or on behalf of the customer or retail forex customer the transaction was not applied in the usual manner, *i.e.,* against the oldest portion of the previously held position. However, no such showing need be made if the futures commission merchant or retail foreign exchange dealer has received such specific instructions in writing from the customer or retail forex customer for whom such account is carried.

* * * * *

24. Revise paragraph (b)(1)(iii) of § 1.49 to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

* * * * *

(b) * * * (1) * * *

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market, to the extent of such accruals.

* * * * *

§ 1.53 [Removed and Reserved]

25. Remove and reserve § 1.53.

26. Amend § 1.57 by revising paragraph (a)(1), (a)(2) introductory text, (a)(2)(ii), (c) introductory text, (c)(2), (c)(4)(i), and (c)(4)(iv), to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) * * *

(1) Open and carry each customer's account with a carrying futures commission merchant on a fully-disclosed basis: *Provided, however,* That an introducing broker which has entered into a guarantee agreement with a futures commission merchant in accordance with the provisions of § 1.10(j) of this part must open and carry such customer's account with such guarantor futures commission merchant on a fully-disclosed basis; and

(2) Transmit promptly for execution all customer orders to:

* * * * *

(ii) A floor broker, if the introducing broker identifies its carrying futures commission merchant and that carrying futures commission merchant is also the clearing member with respect to the customer's order.

* * * * *

(c) An introducing broker may not accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts of customers, or any money, securities or property accruing as a result of such trades or contracts:

Provided, however, That an introducing broker may deposit a check in a qualifying account or forward a check drawn by a customer if:

* * * * *

(2) The check is payable to the futures commission merchant carrying the customer's account;

* * * * *

(4) * * *

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to customers of the futures commission merchant carrying the customer's account;

* * * * *

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with § 1.31, that it was informed that the funds deposited therein are those of customers and are being held in accordance with the provisions of the Act and these regulations.

27. Amend § 1.59 by revising paragraphs (a)(4)(i), (a)(5), (a)(7), (a)(8), (a)(9) introductory text, (a)(10), (b)(1) introductory text, (b)(1)(i)(A), (b)(1)(i)(C), and (c), to read as follows:

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members and consultants.

(a) * * *

(4) * * *

(i) Any governing board member compensated by a self-regulatory organization solely for governing board activities; or

* * * * *

(5) *Material information* means information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a

contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization. As used in this section, "material information" includes, but is not limited to, information relating to present or anticipated cash positions, commodity interests, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization or a linked exchange.

* * * * *

(7) *Linked exchange* means:

(i) Any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a contract market or swap execution facility in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market;

(ii) Any board of trade, exchange or market outside the United States, its territories or possessions, the products of which are listed on a United States contract market, swap execution facility, or a trading facility thereof;

(iii) Any securities exchange, the products of which are held as margin in a commodity account or cleared by a securities clearing organization pursuant to a cross-margining arrangement with a futures clearing organization; or

(iv) Any clearing organization which clears the products of any of the foregoing markets.

(8) *Commodity interest* means any commodity futures, commodity option or swap contract traded on or subject to the rules of a contract market, a swap execution facility or linked exchange, or cleared by a derivatives clearing organization, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market.

(9) *Related commodity interest* means any commodity interest which is traded on or subject to the rules of a contract market, swap execution facility, linked exchange, or other board of trade, exchange, or market, or cleared by a derivatives clearing organization, other than the self-regulatory organization by which a person is employed, and with respect to which:

* * * * *

(10) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within the meaning of § 4.10(d) of this chapter, and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which § 4.5 of this chapter makes available relief from regulation as a commodity pool operator, *i.e.,* registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans.

(b) *Employees of self-regulatory organizations; Self-regulatory organization rules.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5c(c) of the Act and part 40 of this chapter (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) * * *

(A) Trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market, swap execution facility, or clearing organization;

* * * * *

(C) Trading, directly or indirectly, in a commodity interest traded on contract markets or swap execution facilities or cleared by derivatives clearing organizations other than the employing self-regulatory organization if the employee has access to material, non-public information concerning such commodity interest;

* * * * *

(c) *Governing board members, committee members, and consultants; Registered futures association rules.* Each registered futures association must maintain in effect rules which have been submitted to the Commission pursuant to section 17(j) of the Act which provide that no governing board member, committee member, or consultant shall use or disclose —for any purpose other than the performance of official duties as a governing board member, committee member, or consultant—material, non-public information obtained as a result of the performance of such person's official duties.

* * * * *

§ 1.62 [Removed and Reserved]

28. Remove and reserve § 1.62.

29. Amend § 1.63 by revising paragraph (a)(1), (b) introductory text and (d) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(1) *Self-regulatory organization* means a "self-regulatory organization" as defined in § 1.3(ee) of this chapter, and includes a "clearing organization" as defined in § 1.3(d) of this chapter, except as defined in paragraph (b)(6) of this section.

* * * * *

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5c(c) of the Act and part 40 of this chapter or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels or governing board who:

* * * * *

(d) Each self-regulatory organization shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6)(i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, and post the schedule on the self-regulatory organization's website so that it is in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

* * * * *

30. Revise paragraph (a)(1) and paragraph (b) of § 1.67 to read as follows:

§ 1.67 Notification of final disciplinary action involving financial harm to a customer.

(a) * * *

(1) *Final disciplinary action* means any decision by or settlement with a contract market or swap execution facility in a disciplinary matter which cannot be further appealed at the contract market or swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

* * * * *

(b) Upon any final disciplinary action in which a contract market or swap execution facility finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(1)(i) The contract market or swap execution facility shall promptly provide written notice of the disciplinary action to the futures commission merchant or other registrant; and

(ii) A futures commission merchant or other registrant that receives a notice, under paragraph (b)(1)(i) of this section shall promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. If the customer is another futures commission merchant or other registrant, such futures commission merchant or other registrant shall promptly provide notice to the customer.

(2) A written notice required by paragraph (b)(1) of this section must include the principal facts of the disciplinary action and a statement that the contract market or swap execution facility has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer. For the purposes of this paragraph, a notice which includes the information listed in § 9.11(b) of this chapter shall be deemed to include the principal facts of the disciplinary action thereof.

§ 1.68 [Removed and Reserved]

31. Remove and reserve § 1.68.

32. Amend Appendix B to part 1 by revising paragraph (b) to read as follows:

Appendix B to Part 1—Fees for Contract Market Rule Enforcement Reviews and Financial Reviews

* * * * *

(b) The Commission determines fees charged to exchanges based upon a formula that considers both actual costs and trading volume.

* * * * *

Appendix C to Part 1—[Removed and Reserved]

33. Remove and reserve Appendix C to part 1.

PART 5—OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

34a. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

34b. Revise paragraphs (k) and (m) of § 5.1 to read as follows:

§ 5.1 Definitions.

* * * * *

(k) *Retail forex customer* means a person, other than an eligible contract participant as defined in section 1a(18) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

* * * * *

(m) *Retail forex transaction* means any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act. A retail forex transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a contract market designated pursuant to section 5(a) of the Act.

PART 7—CONTRACT MARKET RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

35. Revise part 7 to read as follows:

PART 7—REGISTERED ENTITY RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

Authority: 7 U.S.C. 7a–2(c) and 12a(7), as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

Subpart A—General Provisions

§ 7.1. Scope of rules.

This part sets forth registered entity rules altered or supplemented by the Commission pursuant to section 8a(7) of the Act.

Subpart B—[Reserved]

Subpart C—[Reserved]

PART 8—[REMOVED AND RESERVED]

36. Remove and reserve part 8.

PART 15—REPORTS—GENERAL PROVISIONS

37a. The authority citation for part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

37b. Revise paragraphs (a), (e), (f), (g) and (h) of § 15.05 to read as follows:

§ 15.05 Designation of agent for foreign persons.

(a) For purposes of this section, the term "futures contract" means any contract for the purchase or sale of any commodity for future delivery, or a contract identified under § 36.3(c)(1)(i) traded on an electronic trading facility operating in reliance on the exemption set forth in § 36.3 of this chapter, traded or executed on or subject to the rules of any designated contract market, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term "option contract" means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act, traded or executed on or subject to the rules of any designated contract market, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term "customer" means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term "communication" means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

* * * * *

(e) Any designated contract market that permits a foreign broker to intermediate contracts, agreements or transactions, or permits a foreign trader to effect contracts, agreements or transactions on the facility or exchange, shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader, for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any contracts, agreements or transactions executed by the foreign broker or the foreign trader on the designated contract market. Service or delivery of any communication issued by or on behalf of the Commission to a designated contract market shall constitute valid and effective service upon the foreign broker, any of its customers or the foreign trader. A designated contract market which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any designated contract market to permit a foreign broker, any of its customers or a foreign trader to effect contracts, agreements or transactions on the facility unless the designated contract

market prior thereto informs the foreign broker, any of its customers or the foreign trader, in any reasonable manner the facility deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any contracts, transactions or agreements traded on any designated contract market if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the designated contract market prior to effecting any contract, agreement or transaction on the facility. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the designated contract market prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures or option contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the designated contract market knows or should know that the agreement has expired, been terminated, or is no longer in effect, the designated contract market shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the designated contract market and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a designated contract market on which all transactions of foreign brokers, their customers or foreign traders in futures or option contracts are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraphs (a), (b), (c) and (d) of this section.

* * * * *

PART 18—REPORTS BY TRADERS

38a. The authority citation for part 18 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010); 5 U.S.C. 552 and 552(b), unless otherwise noted.

38b. Revise paragraphs (a)(2), (a)(3), and (a)(4) of § 18.05 to read as follows:

§ 18.05 Maintenance of books and records.

(a) * * *

(2) Executed over the counter or pursuant to part 35 of this chapter;

(3) On exempt commercial markets operating under a Commission grandfather relief order issued pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010));

(4) On exempt boards of trade operating under a Commission grandfather relief order issued pursuant to Section 734(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)); and

* * * * *

PART 21—SPECIAL CALLS

39a. The authority citation for part 21 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 12a, 19 and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010); 5 U.S.C. 552 and 552(b), unless otherwise noted.

39b. Revise paragraph (b) of § 21.03 to read as follows:

§ 21.03 Selected special calls—duties of foreign brokers, domestic and foreign traders, futures commission merchants, clearing members, introducing brokers, and reporting markets.

* * * * *

(b) It shall be unlawful for a futures commission merchant to open a futures or options account or to effect transactions in futures or options contracts for an existing account, or for an introducing broker to introduce such an account, for any customer for whom the futures commission merchant or introducing broker is required to provide the explanation provided for in § 15.05(c) of this chapter, or for a reporting market that is a registered entity under section 1a(40)(F) of the Act, to cause to open an account, or to cause transactions to be effected, in a contract traded in reliance on a Commission grandfather relief order issued pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)), for an existing account for any person that is a foreign clearing member or foreign trader, until the futures commission merchant, introducing broker, clearing member or reporting market has explained fully to the customer, in any manner that such person deems appropriate, the provisions of this section.

* * * * *

PART 36—EXEMPT MARKETS

40a. The authority citation for part 36 is revised to read as follows:

Authority: 7 U.S.C. 2, 6, 6c and 12a, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010); Sections 723(c)(2)(B) and 734(c)(2), Pub. L. 111–203, 124 Stat. 1376 (2010).

40b. Section 36.1 is revised to read as follows:

§ 36.1 Scope.

The provisions of this part apply to any board of trade or electronic trading facility that operates as:

(a) An exempt commercial market operating under a grandfather relief order issued by the Commission pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)), or

(b) An exempt board of trade operating under a grandfather relief order issued by the Commission pursuant to Section 734(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)).

41. Amend § 36.2 by:

a. Revising paragraph (a) introductory text and (a)(2)(i);

b. Adding paragraph (a)(3); and

c. Revising paragraph (b) introductory text, (c)(1), (c)(2)(i) introductory text, (c)(2)(ii) introductory text, (c)(2)(iii), (c)(2)(iv)(A) introductory text, and (c)(3), to read as follows:

§ 36.2 Exempt boards of trade.

(a) *Eligible commodities.* Commodities eligible to be traded by an exempt board of trade are:

* * * * *

(2) * * *

(i) The commodities defined in section 1a(19) of the Act as "excluded commodities" (other than a security,

including any group or index thereof or any interest in, or based on the value of, any security or group or index of securities); and

* * * * *

(3) Such contracts must be entered into only between persons that are eligible contract participants, as defined in section 1a(18) of the Act and as further defined by the Commission, at the time at which the persons entered into the contract.

(b) *Notification.* Boards of trade operating as exempt boards of trade shall maintain on file with the Secretary of the Commission at the Commission's Washington, DC headquarters, in electronic form, a "Notification of Operation as an Exempt Board of Trade," and it shall include:

* * * * *

(c) *Additional requirements*—(1) *Prohibited representation.* A board of trade that meets the criteria set forth in this section and operates as an exempt board of trade shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) *Market data dissemination*—(i) *Criteria for price discovery determination.* An exempt board of trade performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract or transaction executed or traded on the facility when:

* * * * *

(ii) *Notification.* An exempt board of trade operating a market in reliance on the criteria set forth in this section shall notify the Commission when:

* * * * *

(iii) *Price discovery determination.* Following receipt of notice under paragraph (c)(2)(ii) of this section, or on its own initiative, the Commission may notify an exempt board of trade that the facility appears to meet the criteria for performing a significant price discovery function under paragraph (c)(2)(i)(A) or (B) of this section. Before making a final price discovery determination under this paragraph, the Commission shall provide the exempt board of trade with an opportunity for a hearing through the submission of written data, views and arguments. Any such written data, views and arguments shall be filed with the Secretary of the Commission in the form and manner and within the time specified by the Commission. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the facility performs a significant price discovery function under the criteria of paragraph (c)(2)(i)(A) or (B) of this section.

(iv) *Price dissemination.* (A) An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section shall disseminate publicly, and on a daily basis, all of the following information with respect to transactions executed in reliance on the criteria set forth in this section:

* * * * *

(3) *Annual certification.* A board of trade operating as an exempt board of trade shall file with the Commission annually, no later than the end of each calendar year, a notice that includes:

(i) A statement that it continues to operate under the exemption; and

(ii) A certification that the information contained in the previous Notification of Operation as an Exempt Board of Trade is still correct.

42. Section 36.3 is revised to read as follows:

§ 36.3 Exempt commercial markets.

(a) *Eligible transactions.* Agreements, contracts or transactions in an exempt commodity eligible to be entered into on an exempt commercial market must be:

(1) Entered into on a principal-to-principal basis solely between persons that are eligible commercial entities, as that term is defined in section 1a(17) of the Act, at the time the persons enter into the agreement, contract or transaction; and

(2) Executed or traded on an electronic trading facility.

(b) *Notification.* An electronic trading facility relying upon the exemption set forth in this section shall maintain on file with the Secretary of the Commission at the Commission's Washington, DC headquarters, in electronic form, a "Notification of Operation as an Exempt Commercial Market," and it shall include the information and certifications specified in this section.

(c) *Required information*—(1) *All electronic trading facilities.* A facility operating in reliance on the exemption set forth in this section on an on-going basis, must:

(i) Provide the Commission with the terms and conditions, as defined in § 40.1(i) of this chapter and product descriptions for each agreement, contract or transaction listed by the facility in reliance on the exemption set forth in this section, as well as trading conventions, mechanisms and practices;

(ii) Provide the Commission with information explaining how the facility meets the definition of "trading facility" contained in section 1a(51) of the Act and provide the Commission with access to the electronic trading facility's trading protocols, in a format specified by the Commission;

(iii) Demonstrate to the Commission that the facility requires, and will require, with respect to all current and future agreements, contracts and transactions, that each participant agrees to comply with all applicable laws; that the authorized participants are "eligible commercial entities" as defined in section 1a(17) of the Act; that all agreements, contracts and transactions are and will be entered into solely on a principal-to-principal basis; and that the facility has in place a program to routinely monitor participants' compliance with these requirements;

(iv) At the request of the Commission, provide any other information that the Commission, in its discretion, deems relevant to its determination whether an agreement, contract, or transaction performs a significant price discovery function; and

(v) File with the Commission annually, no later than the end of each calendar year, a completed copy of CFTC Form 205—Exempt Commercial Market Annual Certification. The information submitted in Form 205 shall include:

(A) A statement indicating whether the electronic trading facility continues to operate under the exemption; and

(B) A certification that affirms the accuracy of and/or updates the information contained in the previous Notification of Operation as an Exempt Commercial Market.

(2) *Electronic trading facilities trading or executing agreements, contracts or transactions other than significant price discovery contracts.* In addition to the requirements of paragraph (c)(1) of this section, a facility operating in reliance on the exemption set forth in this section, with respect to agreements, contracts or transactions that have not been determined to perform significant price discovery function, on an on-going basis must:

(i) Identify to the Commission those agreements, contracts and transactions conducted on the electronic trading facility with respect to which it intends, in good faith, to rely on the exemption set forth in this section, and which averaged five trades per day or more over the most recent calendar quarter; and, with respect to such agreements, contracts and transactions, either:

(A) Submit to the Commission, in a form and manner acceptable to the Commission, a report for each business day. Each such report shall be electronically transmitted weekly,

within such time period as is acceptable to the Commission after the end of the week to which the data applies, and shall show for each agreement, contract or transaction executed the following information:

(*1*) The underlying commodity, the delivery or price-basing location specified in the agreement, contract or transaction maturity date, whether it is a financially settled or physically delivered instrument, and the date of execution, time of execution, price, and quantity;

(*2*) Total daily volume and, if cleared, open interest;

(*3*) For an option instrument, in addition to the foregoing information, the type of option (*i.e.,* call or put) and strike prices; and

(*4*) Such other information as the Commission may determine; or

(B) Provide to the Commission, in a form and manner acceptable to the Commission, electronic access to those transactions conducted on the electronic trading facility in reliance on the exemption set forth in this section, and meeting the average five trades per day or more threshold test of this section, which would allow the Commission to compile the information set forth in paragraph (c)(2)(i)(A) of this section and create a permanent record thereof.

(ii) Maintain a record of allegations or complaints received by the electronic trading facility concerning instances of suspected fraud or manipulation in trading activity conducted in reliance on the exemption set forth in this section. The record shall contain the name of the complainant, if provided, date of the complaint, market instrument, substance of the allegations, and name of the person at the electronic trading facility who received the complaint;

(iii) Provide to the Commission, in the form and manner prescribed by the Commission, a copy of the record of each complaint received pursuant to paragraph (c)(2)(ii) of this section that alleges, or relates to, facts that would constitute a violation of the Act or Commission regulations. Such copy shall be provided to the Commission no later than 30 calendar days after the complaint is received; *Provided, however,* that in the case of a complaint alleging, or relating to, facts that would constitute an ongoing fraud or market manipulation under the Act or Commission rules, such copy shall be provided to the Commission within three business days after the complaint is received; and

(iv) Provide to the Commission on a quarterly basis, within 15 calendar days of the close of each quarter, a list of each agreement, contract or transaction executed on the electronic trading facility in reliance on the exemption set forth in this section and indicate for each such agreement, contract or transaction the contract terms and conditions, the contract's average daily trading volume, and the most recent open interest figures.

(3) *Electronic trading facilities trading or executing significant price discovery contracts.* In addition to the requirements of paragraph (c)(1) of this section, if the Commission determines that a facility operating in reliance on the exemption set forth in this section trades or executes an agreement, contract or transaction that performs a significant price discovery function, the facility must, with respect to any significant price discovery contract, publish and provide to the Commission the information required by § 16.01 of this chapter.

(4) *Delegation of authority.* The Commission hereby delegates, until the Commission orders otherwise, the authority to determine the form and manner of submitting the required information under paragraphs (c)(1) through (3) of this section, to the Director of the Division of Market Oversight and such members of the Commission's staff as the Director may designate. The Director may submit to the Commission for its consideration any matter that has been delegated by this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph (c)(4).

(5) *Special calls.* (i) All information required upon special call of the Commission shall be transmitted at the same time and to the office of the Commission as may be specified in the call.

(ii) Such information shall include information related to the facility's business as an exempt electronic trading facility in reliance on the exemption set forth in this section, including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption, as the Commission may determine appropriate—

(A) To enforce the antifraud and anti-manipulation provisions of the Act and Commission regulations, and

(B) To evaluate a systemic market event; or

(C) To obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities.

(iii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls to the Directors of the Division of Market Oversight, the Division of Clearing and Intermediary Oversight, and the Division of Enforcement to be exercised by each such Director or by such other employee or employees as the Director may designate. The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph (c)(5). Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(6) *Subpoenas to foreign persons.* A foreign person whose access to an electronic trading facility is limited or denied at the direction of the Commission based on the Commission's belief that the foreign person has failed timely to comply with a subpoena shall have an opportunity for a prompt hearing under the procedures provided in § 21.03(b) and (h) of this chapter.

(7) *Prohibited representation.* An electronic trading facility relying upon the exemption set forth in this section, with respect to agreements, contracts or transactions that are not significant price discovery contracts, shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(d) *Significant price discovery contracts*—(1) *Criteria for significant price discovery determination.* The Commission may determine, in its discretion, that an electronic trading facility operating a market in reliance on the exemption set forth in this section performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract or transaction executed or traded on the facility. In making such a determination, the Commission shall consider, as appropriate:

(i) *Price linkage.* The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position;

(ii) *Arbitrage.* The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a

designated contract market, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis;

(iii) *Material price reference.* The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility;

(iv) *Material liquidity.* The extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market or an electronic trading facility operating in reliance on the exemption set forth in this section;

(v) *Other material factors.* [Reserved]

(2) *Notification of possible significant price discovery contract conditions.* An electronic trading facility operating in reliance on the exemption set forth in this section shall promptly notify the Commission, and such notification shall be accompanied by supporting information or data concerning any contract that:

(i) Averaged five trades per day or more over the most recent calendar quarter; and

(ii)(A) For which the exchange sells its price information regarding the contract to market participants or industry publications; or

(B) Whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another agreement, contract or transaction.

(3) *Procedure for significant price discovery determination.* Before making a final price discovery determination under this paragraph, the Commission shall publish notice in the Federal Register that it intends to undertake a determination with respect to whether a particular agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the electronic trading facility and other interested persons. Any such written data, views and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of publication of notice in the Federal Register or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission shall, within a reasonable period of time after the close of the comment period, issue an order explaining its determination whether the agreement, contract or transaction executed or traded by the electronic trading facility performs a significant price discovery function under the criteria specified in paragraph (d)(1)(i) through (v) of this section.

(4) *Compliance with core principles.* (i) Following the issuance of an order by the Commission that the electronic trading facility executes or trades an agreement, contract or transaction that performs a significant price discovery function, the electronic trading facility must demonstrate, with respect to that agreement, contract or transaction, compliance with the Core Principles set forth in this section and the applicable provisions of this part. If the Commission's order represents the first time it has determined that one of the electronic trading facility's agreements, contracts or transactions performs a significant price discovery function, the facility must submit a written demonstration of compliance with the Core Principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the electronic trading facility has an additional agreement, contract or transaction that performs a significant price discovery function, the facility must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of the Commission's order. Attention is directed to Appendix B of this part for guidance on and acceptable practices for complying with the Core Principles. Submissions demonstrating how the electronic trading facility complies with the Core Principles with respect to its significant price discovery contract must be filed with the Secretary of the Commission at its Washington, DC headquarters. Submissions must include the following:

(A) A written certification that the significant price discovery contract(s) complies with the Act and regulations thereunder;

(B) A copy of the electronic trading facility's rules (as defined in § 40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants. Subsequent rule changes must be certified by the electronic trading facility pursuant to section 5c(c) of the Act and § 40.6 of this chapter. The electronic trading facility also may request Commission approval of any rule changes pursuant to section 5c(c) of the Act and § 40.5 of this chapter;

(C) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(D) A copy of any documents pertaining to or describing the electronic trading system's legal status and governance structure, including governance fitness information;

(E) An executed or executable copy of any agreements or contracts entered into or to be entered into by the electronic trading facility, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the electronic trading facility to comply with a Core Principle;

(F) A copy of any manual or other document describing, with specificity, the manner in which the trading facility will conduct trade practice, market and financial surveillance;

(G) To the extent that any of the items in paragraphs (d)(4)(ii) through (vi) of this section raise issues that are novel, or for which compliance with a Core Principle is not self-evident, an explanation of how that item satisfies the applicable Core Principle or Principles.

(ii) The electronic trading facility must identify with particularity information in the submission that will be subject to a request for confidential treatment pursuant to § 145.09 of this chapter. The electronic trading facility must follow the procedures specified in § 40.8 of this chapter with respect to any information in its submission for which confidential treatment is requested.

(5) *Determination of compliance with core principles.* The Commission shall take into consideration differences between cleared and uncleared significant price discovery contracts when reviewing the implementation of the Core Principles by an electronic trading facility. The electronic facility has reasonable discretion in accounting for differences between cleared and uncleared significant price discovery contracts when establishing the manner in which it complies with the Core Principles.

(6) *Information relating to compliance with core principles.* Upon request by the Commission, an electronic trading facility trading a significant price discovery contract shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the electronic trading facility is in compliance with one or more Core Principles as specified in the request, or that is otherwise requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(7) *Enforceability.* An agreement, contract or transaction entered into on or pursuant to the rules of an electronic trading facility trading or executing a significant price discovery contract shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(i) A violation by the electronic trading facility of the provisions set forth in this section; or

(ii) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement or require an electronic trading facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

(8) *Procedures for vacating a determination of a significant price discovery function*—(i) *By the electronic trading facility.* An electronic trading facility that executes or trades an agreement, contract or transaction that the Commission has determined performs a significant price discovery function under paragraph (d)(3) of this section may petition the Commission to vacate that determination. The petition shall demonstrate that the agreement, contract or transaction no longer performs a significant price discovery function under the criteria specified in paragraph (d)(1), and has not done so for at least the prior 12 months. An electronic trading facility shall not petition for a vacation of a significant price discovery determination more frequently than once every 12 months for any individual contract.

(ii) *By the Commission.* The Commission may, on its own initiative, begin vacation proceedings if it believes that an agreement, contract or transaction has not performed a significant price discovery function for at least the prior 12 months.

(iii) *Procedure.* Before making a final determination whether an agreement, contract or transaction has ceased to perform a significant price discovery function, the Commission shall publish notice in the **Federal Register** that it intends to undertake such a determination and to receive written data, views and arguments relevant to its determination from the electronic trading facility and other interested persons. Written submissions shall be filed with the Secretary of the Commission in the form and manner specified by the Commission, within 30 calendar days of publication of notice in the **Federal Register**, or within such other time specified by the Commission. After consideration of all relevant information, the Commission shall issue an order explaining its determination whether the agreement, contract or transaction has ceased to perform a significant price discovery function and, if so, vacating its prior order. If such an order issues, and the Commission subsequently determines, on its own initiative or after notification by the electronic trading facility, that the agreement, contract or transaction that was subject to the vacation order again performs a significant price discovery function, the electronic trading facility must comply with the Core Principles within 30 calendar days of the date of the Commission's order.

(iv) *Automatic vacation of significant price discovery determination.* Regardless of whether a proceeding to vacate has been initiated, any significant price discovery contract that has no open interest and in which no trading has occurred for a period of 12 complete and consecutive calendar months shall, without further proceedings, no longer be considered to be a significant price discovery contract.

(e) *Commission Review.* The Commission shall, at least annually, evaluate as appropriate agreements, contracts or transactions conducted on an electronic trading facility in reliance on the exemption set forth in this section to determine whether they serve a significant price discovery function as set forth in paragraph (d)(1) above.

43. Amend Appendix A to part 36 by revising introductory paragraph 1, the headings to paragraphs (A), (B), and (C), and paragraphs (D)2. and (D)4., to read as follows:

Appendix A to Part 36—Guidance on Specific Price Discovery Contracts

1. There are four factors that the Commission must consider, as appropriate, in making a determination that a contract is performing a significant price discovery function. The four factors prescribed by the statute are: Price Linkage; Arbitrage; Material Price Reference; and Material Liquidity.

* * * * *

(A) MATERIAL LIQUIDITY—The extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market, or an electronic trading facility operating in reliance on the exemption set forth in this section.

* * * * *

(B) PRICE LINKAGE—The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

* * * * *

(C) ARBITRAGE CONTRACTS—The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

* * * * *

(D) * * *

* * * * *

2. In evaluating a contract's price discovery role as a directly referenced price source, the Commission will perform an analysis to determine whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract. Cash market prices are set explicitly at a differential to the contract being traded on the electronic trading facility when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a contract being traded on the electronic trading facility when, for instance, they are arrived at after adding to, or subtracting from the contract being traded on the electronic trading facility, but then quoted or reported at a flat price. The Commission will also consider whether cash market entities are quoting cash prices based on a contract being traded on the electronic trading facility on a frequent and recurring basis.

* * * * *

4. In applying this criterion, consideration will be given to whether prices established by a contract being traded on the electronic trading facility are reported in a widely distributed industry publication. In making

this determination, the Commission will consider the reputation of the publication within the industry, how frequently it is published, and whether the information contained in the publication is routinely consulted by industry participants in pricing cash market transactions.

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44. Revise Appendix B to Part 36 to read as follows:

Appendix B to Part 36—Guidance on, and Acceptable Practices in, Compliance With Core Principles

1. This Appendix provides guidance on complying with the core principles set forth in this part, both initially and on an ongoing basis. The guidance is provided in paragraph (a) following each core principle and can be used to demonstrate to the Commission core principle compliance under § 36.3(d)(4). The guidance for each core principle is illustrative only of the types of matters an electronic trading facility may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this guidance will help the Commission in its consideration of whether the electronic trading facility is in compliance with the core principles. A submission pursuant to § 36.3(d)(4) should include an explanation or other form of documentation demonstrating that the electronic trading facility complies with the core principles.

2. Acceptable practices meeting selected requirements of the core principles are set forth in paragraph (b) following each core principle. Electronic trading facilities on which significant price discovery contracts are traded or executed that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the selected requirements of the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

CORE PRINCIPLE I—CONTRACTS NOT READILY SUSCEPTIBLE TO MANIPULATION. The electronic trading facility shall list only significant price discovery contracts that are not readily susceptible to manipulation.

(a) *Guidance.* Upon determination by the Commission that a contract listed for trading on an electronic trading facility is a significant price discovery contract, the electronic trading facility must self-certify the terms and conditions of the significant price discovery contract under § 36.3(d)(4) within 90 calendar days of the date of the Commission's order if the contract is the electronic trading facility's first significant price discovery contract; or 30 days from the date of the Commission's order if the contract is not the electronic trading facility's first significant price discovery contract. Once the Commission determines that a contract performs a significant price discovery function, subsequent rule changes must be self-certified to the Commission by the electronic trading facility pursuant to § 40.6 or submitted to the Commission for review and approval pursuant to § 40.5.

(b) *Acceptable practices.* Guideline No.1, 17 CFR part 40, Appendix A may be used as guidance in meeting this core principle for significant price discovery contracts.

CORE PRINCIPLE II—MONITORING OF TRADING. The electronic trading facility shall monitor trading in significant price discovery contracts to prevent market manipulation, price distortion, and disruptions of the delivery of cash-settlement process through market surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded or executed should, with respect to those contracts, demonstrate a capacity to prevent market manipulation and have trading and participation rules to detect and deter abuses. The facility should seek to prevent market manipulation and other trading abuses through a dedicated regulatory department or by delegation of that function to an appropriate third party. An electronic trading facility also should have the authority to intervene as necessary to maintain an orderly market.

(b) *Acceptable practices*—(1) *An acceptable trade monitoring program.* An acceptable trade monitoring program should facilitate, on both a routine and non-routine basis, arrangements and resources to detect and deter abuses through direct surveillance of each significant price discovery contract. Direct surveillance of each significant price discovery contract will generally involve the collection of various market data, including information on participants' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices. For contracts with a substantial number of participants, an effective surveillance program should employ a much more comprehensive large trader reporting system.

(2) *Authority to collect information and documents.* The electronic trading facility should have the authority to collect information and documents in order to reconstruct trading for appropriate market analysis. Appropriate market analysis should enable the electronic trading facility to assess whether each significant price discovery contract is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through market channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply—and to the pricing of the deliverable commodity relative to the futures price and relative to the similar, but non-deliverable, kinds of the commodity. For cash-settled contracts, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the contract will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) *Ability to assess participants' market activity and power.* To assess participants' activity and potential power in a market, electronic trading facilities, with respect to significant price discovery contracts, at a minimum should have routine access to the positions and trading of its participants and, if applicable, should provide for such access through its agreements with its third-party provider of clearing services.

CORE PRINCIPLE III—ABILITY TO OBTAIN INFORMATION. The electronic trading facility shall establish and enforce rules that allow the electronic trading facility to obtain any necessary information to perform any of the functions set forth in this subparagraph, provide the information to the Commission upon request, and have the capacity to carry out such international information-sharing agreements as the Commission may require.

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded or executed should, with respect to those contracts, have the ability and authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by participants. This includes having arrangements and resources for recording full data entry and trade details and safely storing audit trail data. An electronic trading facility should have systems sufficient to enable it to use the information for purposes of assisting in the prevention of participant and market abuses through reconstruction of trading and providing evidence of any violations of the electronic trading facility's rules.

(b) *Acceptable practices*—(1) The goal of an audit trail is to detect and deter market abuse. An effective contract audit trail should capture and retain sufficient trade-related information to permit electronic trading facility staff to detect trading abuses and to reconstruct all transactions within a reasonable period of time. An audit trail should include specialized electronic surveillance programs that identify potentially abusive trades and trade patterns. An acceptable audit trail must be able to track an order from time of entry into the trading system through its fill. The electronic trading facility must create and maintain an electronic transaction history database that contains information with respect to transactions executed on each significant price discovery contract.

(2) An acceptable audit trail should include the following: original source documents, transaction history, electronic analysis capability, and safe storage capability. An acceptable audit trail system would satisfy the following practices.

(i) *Original source documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded. For each order (whether filled, unfilled or cancelled, each of which should be retained or electronically captured), such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry.

(ii) *Transaction history.* A transaction history consists of an electronic history of each transaction, including:

(A) All the data that are input into the trade entry or matching system for the transaction to match and clear;

(B) Timing and sequencing data adequate to reconstruct trading; and

(C) The identification of each account to which fills are allocated.

(iii) *Electronic analysis capability.* An electronic analysis capability permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to market abuse.

(iv) *Safe storage capability.* Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in the form and manner specified by the Commission or, where no acceptable manner of retention is specified, in accordance with the recordkeeping standards of Commission rule 1.31 (17 CFR 1.31).

(3) Arrangements and resources for the disclosure of the obtained information and documents to the Commission upon request. The electronic trading facility should maintain records of all information and documents related to each significant price discovery contract in a form and manner acceptable to the Commission. Where no acceptable manner of maintenance is specified, records should be maintained in accordance with the recordkeeping standards of Commission rule 1.31 (17 CFR 1.31).

(4) The capacity to carry out appropriate information-sharing agreements as the Commission may require. Appropriate information-sharing agreements could be established with other markets or the Commission can act in conjunction with the electronic trading facility to carry out such information sharing.

CORE PRINCIPLE IV—POSITION LIMITATIONS OR ACCOUNTABILITY. The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.

(a) *Guidance.* [Reserved]

(b) *Acceptable practices for uncleared trades.* [Reserved]

(c) *Acceptable practices for cleared trades*—(1) *Introduction.* In order to diminish potential problems arising from excessively large speculative positions, and to facilitate orderly liquidation of expiring contracts, an electronic trading facility relying on the exemption set forth in this section should adopt rules that set position limits or accountability levels on traders' cleared positions in significant price discovery contracts. These position limit rules specifically may exempt bona fide hedging; permit other exemptions; or set limits differently by market, delivery month or time period. For the purpose of evaluating a significant price discovery contract's speculative-limit program for cleared positions, the Commission will consider the specified position limits or accountability levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified limits or levels, and procedures for dealing with violations.

(2) *Accounting for cleared trades*—(i) Speculative-limit levels typically should be set in terms of a trader's combined position involving cleared trades in a significant price discovery contract, plus positions in agreements, contracts and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contract. (This circumstance typically exists where an exempt commercial market lists a particular contract for trading but also allows for positions in that contract to be cleared together with positions established through bilateral or off-exchange transactions, such as block trades, in the same contract. Essentially, both the on-facility and off-facility transactions are considered fungible with each other.) In this connection, the electronic trading facility should make arrangements to ensure that it is able to ascertain accurate position data for the market.

(ii) For significant price discovery contracts that are traded on a cleared basis, the electronic trading facility should apply position limits to cleared transactions in the contract.

(3) *Limitations on spot-month positions.* Spot-month limits should be adopted for significant price discovery contracts to minimize the susceptibility of the market to manipulation or price distortions, including squeezes and corners or other abusive trading practices.

(i) *Contracts economically equivalent to an existing contract.* An electronic trading facility that lists a significant price discovery contract that is economically-equivalent to another significant price discovery contract or to a contract traded on a designated contract market should set the spot-month limit for its significant price discovery contract at the same level as that specified for the economically-equivalent contract.

(ii) *Contracts that are not economically equivalent to an existing contract.* There may not be an economically-equivalent significant price discovery contract or economically-equivalent contract traded on a designated contract market. In this case, the spot-month speculative position limit should be established in the following manner. The spot-month limit for a physical delivery market should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. The spot-month limit for a physical-delivery market is appropriately set at no more than 25 percent of the estimated deliverable supply. In the case where a significant price discovery contract has a cash settlement provision, the spot-month limit should be set at a level that minimizes the potential for price manipulation or distortion in the significant price discovery contract itself; in related futures and options contracts traded on a designated contract market; in other significant price discovery contracts; in other fungible agreements, contracts and transactions; and in the underlying commodity.

(4) *Position accountability for non-spot-month positions.* The electronic trading facility should establish for its significant price discovery contracts non-spot individual month position accountability levels and all-months-combined position accountability levels. An electronic trading facility may establish non-spot individual month position limits and all-months-combined position limits for its significant price discovery contracts in lieu of position accountability levels.

(i) *Definition.* Position accountability provisions provide a means for an exchange to monitor traders' positions that may threaten orderly trading. An acceptable accountability provision sets target accountability threshold levels that may be exceeded, but once a trader breaches such accountability levels, the electronic trading facility should initiate an inquiry to determine whether the individual's trading activity is justified and is not intended to manipulate the market. As part of its investigation, the electronic trading facility may inquire about the trader's rationale for holding a position in excess of the accountability levels. An acceptable accountability provision should provide the electronic trading facility with the authority to order the trader not to further increase positions. If a trader fails to comply with a request for information about positions held, provides information that does not sufficiently justify the position, or continues to increase contract positions after a request not to do so is issued by the facility, then the accountability provision should enable the electronic trading facility to require the trader to reduce positions.

(ii) *Contracts economically equivalent to an existing contract.* When an electronic trading facility lists a significant price discovery contract that is economically equivalent to another significant price discovery contract or to a contract traded on a designated contract market, the electronic trading facility should set the non-spot individual month position accountability level and all-months-combined position accountability level for its significant price discovery contract at the same levels, or lower, as those specified for the economically-equivalent contract.

(iii) *Contracts that are not economically equivalent to an existing contract.* For significant price discovery contracts that are not economically equivalent to an existing contract, the trading facility shall adopt non-spot individual month and all-months-combined position accountability levels that are no greater than 10 percent of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year. For electronic trading facilities that choose to adopt non-spot individual month and all-months-combined position

limits in lieu of position accountability levels for their significant price discovery contracts, the limits should be set in the same manner as the accountability levels.

(iv) *Contracts economically equivalent to an existing contract with position limits.* If a significant price discovery contract is economically equivalent to another significant price discovery contract or to a contract traded on a designated contract market that has adopted non-spot or all-months-combined position limits, the electronic trading facility should set non-spot month position limits and all-months-combined position limits for its significant price discovery contract at the same (or lower) levels as those specified for the economically-equivalent contract.

(5) *Account aggregation.* An electronic trading facility should have aggregation rules for significant price discovery contracts that apply to accounts under common control, those with common ownership, *i.e.,* where there is a ten percent or greater financial interest, and those traded according to an express or implied agreement. Such aggregation rules should apply to cleared transactions with respect to applicable speculative position limits. An electronic trading facility will be permitted to set more stringent aggregation policies. An electronic trading facility may grant exemptions to its price discovery contracts' position limits for bona fide hedging (as defined in § 1.3(z) of this chapter) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) *Implementation deadlines.* An electronic trading facility with a significant price discovery contract is required to comply with Core Principle IV within 90 calendar days of the date of the Commission's order determining that the contract performs a significant price discovery function if such contract is the electronic trading facility's first significant price discovery contract, or within 30 days of the date of the Commission's order if such contract is not the electronic trading facility's first significant price discovery contract. For the purpose of applying limits on speculative positions in newly-determined significant price discovery contracts, the Commission will permit a grace period following issuance of its order for traders with cleared positions in such contracts to become compliant with applicable position limit rules. Traders who hold cleared positions on a net basis in the electronic trading facility's significant price discovery contract must be at or below the specified position limit level no later than 90 calendar days from the date of the electronic trading facility's implementation of position limit rules, unless a hedge exemption is granted by the electronic trading facility. This grace period applies to both initial and subsequent price discovery contracts. Electronic trading facilities should notify traders of this requirement promptly upon implementation of such rules.

(7) *Enforcement provisions.* The electronic trading facility should have appropriate procedures in place to monitor its position limit and accountability provisions and to address violations.

(i) An electronic trading facility with significant price discovery contracts should use an automated means of detecting traders' violations of speculative limits or exemptions, particularly if the significant price discovery contracts have large numbers of traders. An electronic trading facility should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication. An automated system also should be used to determine whether a trader has exceeded applicable non-spot individual month position accountability levels and all-months-combined position accountability levels.

(ii) An electronic trading facility should establish a program for effective enforcement of position limits for significant price discovery contracts. Electronic trading facilities should use a large trader reporting system to monitor and enforce daily compliance with position limit rules. The Commission notes that an electronic trading facility may allow traders to periodically apply to the electronic trading facility for an exemption and, if appropriate, be granted a position level higher than the applicable speculative limit. The electronic trading facility should establish a program to monitor approved exemptions from the limits. The position levels granted under such hedge exemptions generally should be based upon the trader's commercial activity in related markets including, but not limited to, positions held in related futures and options contracts listed for trading on designated contract markets, fungible agreements, contracts and transactions, as determined by a derivatives clearing organization. Electronic trading facilities may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An electronic trading facility should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the electronic trading facility approve a specific maximum higher level.

(iii) An acceptable speculative limit program should have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The electronic trading facility policies should consider appropriate actions.

(8) *Violation of Commission rules.* A violation of position limits for significant price discovery contracts that have been self-certified by an electronic trading facility is also a violation of section 4a(e) of the Act.

CORE PRINCIPLE V—EMERGENCY AUTHORITY. The electronic trading facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate open positions in significant price discovery contracts and to suspend or curtail trading in a significant price discovery contract.

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded should have clear procedures and guidelines for decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. An electronic trading facility on which significant price discovery contracts are executed or traded should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should include notifying the Commission of the exercise of the electronic trading facility's regulatory emergency authority, explaining how conflicts of interest are minimized, and documenting the electronic trading facility's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule and any related submissions for rule approval pursuant to part 40 of this chapter, when carried out pursuant to an electronic trading facility's emergency authority. To address perceived market threats, the electronic trading facility on which significant price discovery contracts are executed or traded should, among other things, be able to impose position limits in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from market participants or clearing members (for contracts that are cleared through a clearinghouse), order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the electronic trading facility, order the transfer of contracts and the margin for such contracts from one market participant to another, or alter the delivery terms or conditions or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

(b) *Acceptable practices.* [Reserved]

CORE PRINCIPLE VI—DAILY PUBLICATION OF TRADING INFORMATION. The electronic trading facility shall make public daily information on price, trading volume, and other trading data to the extent appropriate for significant price discovery contracts.

(a) *Guidance.* An electronic trading facility, with respect to significant price discovery contracts, should provide to the public information regarding settlement prices, price range, volume, open interest, and other related market information for all applicable contracts as determined by the Commission on a fair, equitable and timely basis. Provision of information for any applicable contract can be through such means as provision of the information to a financial information service or by timely placement of the information on the electronic trading facility's public Web site.

(b) *Acceptable practices.* Compliance with § 16.01 of this chapter, which is mandatory, is an acceptable practice that satisfies the requirements of Core Principle VI.

CORE PRINCIPLE VII—COMPLIANCE WITH RULES. The electronic trading facility shall monitor and enforce compliance with

the rules of the electronic trading facility, including the terms and conditions of any contracts to be traded and any limitations on access to the electronic trading facility.

(a) *Guidance*—(1) An electronic trading facility on which significant price discovery contracts are executed or traded should have appropriate arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by its market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs may be carried out by the electronic trading facility itself or through delegation or contracting-out to a third party. If the electronic trading facility on which significant price discovery contracts are executed or traded delegates or contracts-out the trade practice surveillance responsibility to a third party, such third party should have the capacity and authority to carry out such programs, and the electronic trading facility should retain appropriate supervisory authority over the third party.

(2) An electronic trading facility on which significant price discovery contracts are executed or traded should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend the activities of a market participant as well as the authority and ability to terminate the activities of a market participant pursuant to clear and fair standards. The electronic trading facility can satisfy this criterion for market participants by expelling or denying such person's future access upon a determination that such a person has violated the electronic trading facility's rules.

(b) *Acceptable practices.* An acceptable trade practice surveillance program generally would include:

(1) Maintenance of data reflecting the details of each transaction executed on the electronic trading facility;

(2) Electronic analysis of this data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to the electronic trading facility's attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend the activities of a market participant pursuant to clear and fair standards that are available to market participants.

CORE PRINCIPLE VIII—CONFLICTS OF INTEREST. The electronic trading facility on which significant price discovery contracts are executed or traded shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the electronic trading facility and establish a process for resolving such conflicts of interest.

(a) *Guidance.* (1) The means to address conflicts of interest in the decision-making of an electronic trading facility on which significant price discovery contracts are executed or traded should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the electronic trading facility on which significant price discovery contracts are executed or traded should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and electronic trading facility employees or gained through an ownership interest in the electronic trading facility or its parent organization(s).

(2) All electronic trading facilities on which significant price discovery contracts are traded bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided in section 3 of the Act. Under Core Principle VIII, they are also required to minimize conflicts of interest in their decision-making processes. To comply with this core principle, electronic trading facilities on which significant price discovery contracts are traded should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, market participants, other industry participants and other constituencies.

(b) *Acceptable practices.* [Reserved]

CORE PRINCIPLE IX—ANTITRUST CONSIDERATIONS. Unless necessary or appropriate to achieve the purposes of this Act, the electronic trading facility, with respect to any significant price discovery contracts, shall endeavor to avoid adopting any rules or taking any actions that result in any unreasonable restraints of trade or imposing any material anticompetitive burden on trading on the electronic trading facility.

(a) *Guidance.* An electronic trading facility, with respect to a significant price discovery contract, may at any time request that the Commission consider under the provisions of section 15(b) of the Act any of the electronic trading facility's rules, which may be trading protocols or policies, operational rules, or terms or conditions of any significant price discovery contract. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable practices.* [Reserved]

PART 41—SECURITY FUTURES PRODUCTS

45a. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

45b. Revise § 41.2 to read as follows:

§ 41.2 Required records.

A designated contract market that trades a security index or security futures product shall maintain in accordance with the requirements of § 1.31 of this chapter books and records of all activities related to the trading of such products, including: Records related to any determination under subpart B of this part whether or not a futures contract on a security index is a narrow-based security index or a broad-based security index.

46. Revise paragraph (a) introductory text of § 41.12 to read as follows:

§ 41.12 Indexes underlying futures contracts trading for fewer than 30 days.

(a) An index on which a contract of sale for future delivery is trading on a designated contract market or foreign board of trade is not a narrow-based security index under section 1a(25) of the Act (7 U.S.C. 1a(25)) for the first 30 days of trading, if:

* * * * *

47. Revise § 41.13 to read as follows:

§ 41.13 Futures contracts on security indexes trading on or subject to the rules of a foreign board of trade.

When a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market.

48. Revise paragraphs (a)(1), (a)(3) and (b)(4) of § 41.21 to read as follows:

§ 41.21 Requirements for underlying securities.

(a) * * *

(1) The underlying security is registered pursuant to section 12 of the Securities Exchange Act of 1934;

* * * * *

(3) The underlying security conforms with the listing standards for the security futures product that the designated contract market has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

(b) * * *

(4) The index conforms with the listing standards for the security futures product that the designated contract market has filed with the SEC under section 19(b) of the Securities Exchange Act of 1934.

49. Revise the introductory text and paragraph (e) of § 41.22 to read as follows:

§ 41.22 Required certifications.

It shall be unlawful for a designated contract market to list for trading or

execution a security futures product unless the designated contract market has provided the Commission with a certification that the specific security futures product or products and the designated contract market meet, as applicable, the following criteria:

* * * * *

(e) If the board of trade is a designated contract market pursuant to section 5 of the Act, dual trading in these security futures products is restricted in accordance with § 41.27;

* * * * *

50. Revise paragraph (a) introductory text, paragraph (a)(5), and paragraph (b) of § 41.23 to read as follows:

§ 41.23 Listing of security futures products for trading.

(a) *Initial listing of products for trading.* To list new security futures products for trading, a designated contract market shall submit to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the initiation of trading, a filing that:

* * * * *

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder; and

* * * * *

(b) *Voluntary submission of security futures products for Commission approval.* A designated contract market may request that the Commission approve any security futures product under the procedures of § 40.5 of this chapter, *provided however,* that the registered entity shall include the certification required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of security futures products.

51. Amend § 41.24 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising redesignated paragraph (b), to read as follows:

§ 41.24 Rule amendments to security futures products.

* * * * *

(b) *Voluntary submission of rules for Commission review and approval.* A designated contract market or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, *provided however,* that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

52. Revise paragraphs (a)(1), (a)(2) introductory text, (a)(3) introductory text, (a)(3)(i)(A), (a)(3)(i)(B), (a)(3)(iv), and (d) of § 41.25 to read as follows:

§ 41.25 Additional conditions for trading for security futures products.

(a) *Common provisions*—(1) *Reporting of data.* The designated contract market shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory trading halts.* The rules of a designated contract market that lists or trades one or more security futures products must include the following provisions:

* * * * *

(3) *Speculative position limits.* The designated contract market shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market shall:

(i) * * *

(A) For security futures products where the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market may adopt a position accountability rule. Upon request by the designated contract market, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

* * * * *

(iv) For purposes of this section, average daily trading volume shall be calculated monthly, using data for the most recent six-month period. If the data justify a higher or lower speculative limit for a security future, the designated contract market may raise or lower the position limit for that security future effective no earlier than the day after it has provided notification to the Commission and to the public under the submission requirements of § 41.24. If the data require imposition of a reduced position limit for a security future, the designated contract market may permit any trader holding a position in compliance with the previous position limit, but in excess of the reduced limit, to maintain such position through the expiration of the security futures contract; *provided,* that the designated contract market does not find that the position poses a threat to the orderly expiration of such contract.

* * * * *

(d) The Commission may exempt a designated contract market from the provisions of paragraphs (a)(2) and (b) of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of customers. An exemption granted pursuant to this paragraph shall not operate as an exemption from any Securities and Exchange Commission rules. Any exemption that may be required from such rules must be obtained separately from the Securities and Exchange Commission.

53. Amend § 41.27 by:

a. Revising paragraphs (a)(1), (a)(3) introductory text, (a)(4)(v), (a)(5), (b), (d) introductory text, (d)(1), (d)(4), and (f); and

b. Removing and reserving paragraphs (c)(2) and (e)(2), to read as follows:

§ 41.27 Prohibition of dual trading in security futures products by floor brokers.

(a) * * *

(1) Trading session means hours during which a designated contract market is scheduled to trade continuously during a trading day, as set forth in its rules, including any related post settlement trading session. A designated contract market may have more than one trading session during a trading day.

* * * * *

(3) Broker association includes two or more designated contract market members with floor trading privileges of whom at least one is acting as a floor broker who:

* * * * *

(4) * * *

(v) An account for another member present on the floor of a designated contract market or an account controlled by such other member.

(5) Dual trading means the execution of customer orders by a floor broker

through open outcry during the same trading session in which the floor broker executes directly or by initiating and passing to another member, either through open outcry or through a trading system that electronically matches bids and offers pursuant to a predetermined algorithm, a transaction for the same security futures product on the same designated contract market for an account described in paragraphs (a)(4)(i) through (v) of this section.

(b) *Dual trading prohibition.* (1) No floor broker shall engage in dual trading in a security futures product on a designated contract market, except as otherwise provided under paragraphs (d), (e), and (f) of this section.

(2) A designated contract market operating an electronic market or electronic trading system that provides market participants with a time or place advantage or the ability to override a predetermined algorithm must submit an appropriate rule proposal to the Commission consistent with the procedures set forth in § 40.5. The proposed rule must prohibit electronic market participants with a time or place advantage or the ability to override a predetermined algorithm from trading a security futures product for accounts in which these same participants have any interest during the same trading session that they also trade the same security futures product for other accounts. This paragraph, however, is not applicable with respect to execution priorities or quantity guarantees granted to market makers who perform that function, or to market participants who receive execution priorities based on price improvement activity, in accordance with the rules governing the designated contract market.

(c) * * *

(2) [Reserved]

(d) *Specific permitted exceptions.* Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market pursuant to one or more of the following specific exceptions:

(1) *Correction of errors.* To offset trading errors resulting from the execution of customer orders, *provided,* that the floor broker must liquidate the position in his or her personal error account resulting from that error through open outcry or through a trading system that electronically matches bids and offers as soon as practicable, but, except as provided herein, not later than the close of business on the business day following the discovery of error. In the event that a floor broker is unable to offset the error trade because the daily price fluctuation limit is reached, a trading halt is imposed by the designated contract market, or an emergency is declared pursuant to the rules of the designated contract market, the floor broker must liquidate the position in his or her personal error account resulting from that error as soon as practicable thereafter.

* * * * *

(4) *Market emergencies.* To address emergency market conditions resulting in a temporary emergency action as determined by a designated contract market.

(e) * * *

(2) [Reserved]

(f) *Unique or special characteristics of agreements, contracts or transactions, or of designated contract markets.* Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market to address unique or special characteristics of agreements, contracts, or transactions, or of the designated contract market as provided herein. Any rule of a designated contract market that would permit dual trading when it would otherwise be prohibited, based on a unique or special characteristic of agreements, contracts, or transactions, or of the designated contract market must be submitted to the Commission for prior approval under the procedures set forth in § 40.5 of this chapter. The rule submission must include a detailed demonstration of why an exception is warranted.

54. Revise paragraph (a)(30) of § 41.43 to read as follows:

§ 41.43 Definitions.

(a) * * *

(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Exchange Act, a national securities association registered under section 15A of the Exchange Act, or a contract market registered under section 5 of the Act or section 5f of the Act.

* * * * *

55. Revise paragraph (b) introductory text of § 41.49 to read as follows:

§ 41.49 Filing proposed margin rule changes with the Commission.

* * * * *

(b) *Filing requirements under the Act.* Any self-regulatory authority that is registered with the Commission as a designated contract market under section 5 of the Act shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Securities Exchange Act, submit such proposed rule change to the Commission as follows:

* * * * *

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

56a. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

56b. Amend § 140.72 by

a. Revising the heading; and

b. Revising paragraphs (a), (b), (d) and (f), to read as follows:

§ 140.72 Delegation of authority to disclose confidential information to a contract market, swap execution facility, swap data repository, registered futures association or self-regulatory organization.

(a) Pursuant to the authority granted under sections 2(a)(11), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Special Assistant to the Executive Director, the Director of the Division of Clearing and Intermediary Oversight, each Deputy Director of the Division of Clearing and Intermediary Oversight, the Chief Accountant, the General Counsel, each Deputy General Counsel, the Director of the Division of Market Oversight, each Deputy Director of the Division of Market Oversight, the Director of the Market Surveillance Section, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, each of the Regional Administrators, each of the Directors of the Market Surveillance Branches, the Chief Economist of the Office of the Chief Economist, the Deputy Chief Economist of the Office of the Chief Economist, the Director of the Office of International Affairs, and the Deputy Director of the Office of International Affairs, the authority to disclose to an official of any contract market, swap execution facility, swap data repository, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to, the full facts concerning any transaction or market operation, including the names of the parties

thereto. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response to a request by an official of a contract market, swap execution facility, swap data repository, registered futures association or self-regulatory organization.

(b) Disclosure under this section shall only be made to a contract market, swap execution facility, swap data repository, registered futures association or self-regulatory organization official who is named in a list filed with the Commission by the chief executive officer of the contract market, swap execution facility, swap data repository, registered futures association or self-regulatory organization, which sets forth the official's name, business address and telephone number. The chief executive officer shall thereafter notify the Commission of any deletions or additions to the list of officials authorized to receive disclosures under this section. The original list and any supplemental list required by this paragraph shall be filed with the Secretary of the Commission, and a copy thereof shall also be filed with the Regional Coordinator for the region in which the contract market, swap execution facility, or swap data repository is located or in which the registered futures association or self-regulatory organization has its principal office.

* * * * *

(d) For purposes of this section, the term "official" shall mean any officer or member of a committee of a contract market, swap execution facility, swap data repository, registered futures association or self-regulatory organization who is specifically charged with market surveillance or audit or investigative responsibilities, or their duly authorized representative or agent, who is named on the list filed pursuant to paragraph (b) of this section or any supplement thereto.

* * * * *

(f) Any contract market, swap execution facility, swap data repository, registered futures association or self-regulatory organization receiving information from the Commission under these provisions shall not disclose such information except that disclosure may be made in any self-regulatory action or proceeding.

57. Amend § 140.77 by:

a. Revising the heading; and

b. Revising paragraph (a) to read as follows:

§ 140.77 Delegation of authority to determine that applications for contract market designation, swap execution facility registration, or swap data repository registration are materially incomplete.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designees, the authority to determine that an application for contract market designation, swap execution facility registration, or swap data repository registration is materially incomplete under section 6 of the Commodity Exchange Act and to so notify the applicant.

* * * * *

58. Revise paragraphs (a) and (b) of § 140.96 to read as follows:

§ 140.96 Delegation of authority to publish in the Federal Register.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to publish in the **Federal Register** notice of the availability for comment of the proposed terms and conditions of applications for contract market designation, swap execution facility and swap data repository registration, and to determine to publish, and to publish, requests for public comment on proposed exchange, swap execution facility, or swap data repository rules, and rule amendments, when there exists novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the Act, including regulations under the Act.

(b) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designee, and to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the **Federal Register**, requests for public comment on proposed exchange and self-regulatory organization rule amendments when publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons.

* * * * *

59. Revise paragraph (d)(2) of § 140.99 to read as follows:

§ 140.99 Requests for exemptive, no-action and interpretative letters.

* * * * *

(d) * * *

(2) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered swap execution facilities, registered swap data repositories, exempt commercial markets, exempt boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, foreign trading terminals, hedging exemptions, and the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The request must be submitted electronically using the e-mail address *dmoletters@cftc.gov* (for requests filed with the Division of Market Oversight), or *dcioletters@cftc.gov* (for requests filed with the Division of Clearing and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight or the Division of Clearing and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

* * * * *

60. Amend § 140.735–2 by:

a. Redesignating paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) as (b)(1)(ii), (b)(1)(iv), and (b)(1)(v), respectively;

b. Adding paragraphs (b)(1)(i) and (b)(1)(iii); and

c. Revising paragraphs (b)(2) and (c), to read as follows:

§ 140.735–2 Prohibited transactions.

* * * * *

(b) * * *

(1) * * *

(i) In swaps;

* * * * *

(iii) In retail forex transactions, as that term is defined in § 5.1(m);

* * * * *

(2) Effect any purchase or sale of a commodity option, futures contract, or swap involving a security or group of securities;

* * * * *

(c) *Exception for farming, ranching, and natural resource operations.* The prohibitions in paragraphs (b)(1)(i) and (ii) of this section shall not apply to a transaction in connection with any farming, ranching, oil and gas, mineral rights, or other natural resource operation in which the member or employee has a financial interest, if he or she is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures, commodity option, or swap transaction and has previously notified the General Counsel [2] in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage, and the identity of the person or persons who will make trading decisions for the operation; [3]

* * * * *

61. Revise paragraph (b)(1) of § 140.735–2a to read as follows:

§ 140.735–2a Prohibited Interests.

* * * * *

(b) * * *

(1) Have a financial interest, through ownership of securities or otherwise, in any person [5] registered with the Commission (including futures commission merchants, associated persons and agents of futures commission merchants, floor brokers, commodity trading advisors and commodity pool operators, and any other persons required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission), or any contract market, swap execution facility, swap data repository, board of trade, or other trading facility, or any clearing organization subject to regulation or oversight by the Commission; [6]

* * * * *

62. Revise § 140.735–3 to read as follows:

§ 140.735–3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange, swap execution facility, swap data repository or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market, swap execution facility, swap data repository or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.[11]

PART 145—COMMISSION RECORDS AND INFORMATION

63a. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

63b. Revise paragraph (c)(1), (d)(1) introductory text, and (d)(1)(vi) of § 145.9 to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(c) * * *

(1) *Submitter.* A "submitter" is any person who submits any information or material to the Commission or who permits any information or material to be submitted to the Commission. For purposes of paragraph (d)(1)(ii) of this section only, "submitter" includes any person whose information has been submitted to a designated contract market, derivatives clearing organization, swap execution facility, swap data repository or registered futures association that in turn has submitted the information to the Commission.

* * * * *

(d) *Written request for confidential treatment.* (1) Any submitter may request in writing that the Commission afford confidential treatment under the Freedom of Information Act to any information that he or she submits to the Commission. Except as provided in paragraph (d)(4) of this section, no oral requests for confidential treatment will be accepted by the Commission. The submitter shall specify the grounds on which confidential treatment is being requested but need not provide a detailed written justification of the request unless required to do so under paragraph (e) of this section. Confidential treatment may be requested only on the grounds that disclosure:

* * * * *

(vi) Would reveal investigatory records compiled for law enforcement purposes when disclosure would interfere with enforcement proceedings or disclose investigative techniques and procedures, *provided,* that the claim may be made only by a designated contract market, derivatives clearing organization, swap execution facility, swap data repository or registered futures association with regard to its own investigatory records.

* * * * *

64. Revise paragraphs (a)(6), (a)(8), and (b)(13) of Appendix A to part 145 to read as follows:

Appendix A To Part 145—Compilation of Commission Records Available to the Public

* * * * *

(a) * * *

[2] As used in this subpart, "General Counsel" refers to the General Counsel in his or her capacity as counselor for the Commission and designated agency ethics official for the Commission, and includes his or her designee and the alternate designated agency ethics official appointed by the agency head pursuant to 5 CFR 2638.202.

[3] Although not required, if they choose to do so, members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or options transactions permitted under paragraph (c) of this section. A member or employee considering such arrangements should consult with the Office of General Counsel in advance for approval. Should a member or employee gain knowledge of an actual futures, commodity option, or swap transaction entered into by an operation described in paragraph (c) of this section that has already taken place and the market position represented by that transaction remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from any particular matter that will have a direct and predictable effect on the financial interest in question, may be appropriate.

[5] As defined in section 1a(38) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation and a trust.

[6] Attention is directed to 18 U.S.C. 208.

[11] Attention is directed to section 2(a)(8) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

(6) Rule enforcement and financial reviews (public version).

* * * * *

(8) Commission rules and regulations, Federal Register notices, interpretative letters.

* * * * *

(b) * * *

(13) Publicly available portions of applications to become a registered entity including the transmittal letter, application form, proposed rules, proposed bylaws, corporate documents, any overview or similar summary provided by the applicant, any documents pertaining to the applicant's legal status and governance structure, including governance fitness information, and any other part of the application not covered by a request for confidential treatment.

* * * * *

PART 155—TRADING STANDARDS

65a. The authority citation for part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a, unless otherwise noted.

65b. Revise the introductory text of § 155.2 to read as follows:

§ 155.2 Trading standards for floor brokers.

Each contract market shall adopt rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:

* * * * *

66. Revise paragraphs (a)(1), (b)(2)(ii), and (c)(1) of § 155.3 to read as follows:

§ 155.3 Trading standards for futures commission merchants.

(a) * * *

(1) Insure, to the extent possible, that each order received from a customer which is executable at or near the market price is transmitted to the floor of the appropriate contract market before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

* * * * *

(b) * * *

(2) * * *

(ii) In the case of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter, a futures commission merchant must obtain the customer's prior consent through a signed acknowledgment, which may be accomplished in accordance with § 1.55(d) of this chapter.

(c) * * *

(1) Receives written authorization from a person designated by such other futures commission merchant or introducing broker with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section or § 155.4(a)(2), respectively;

* * * * *

67. Revise paragraphs (a)(1), (b)(2)(ii), and (c)(2) of § 155.4 to read as follows:

§ 155.4 Trading standards for introducing brokers.

(a) * * *

(1) Insure, to the extent possible, that each order received from a customer which is executable at or near the market price is transmitted to the futures commission merchant carrying the account of the customer before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

* * * * *

(b) * * *

(2) * * *

(ii) In the case of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter, an introducing broker must obtain the customer's prior consent through a signed acknowledgment, which may be accomplished in accordance with § 1.55(d) of this chapter.

* * * * *

(c) * * *

(2) Copies of all statements for such account and of all written records prepared by such futures commission merchant upon receipt of orders for such account pursuant to § 155.3(c)(2) are transmitted on a regular basis to the introducing broker with which such person is affiliated.

§ 155.6 [Removed and Reserved]

68. Remove and reserve § 155.6.

PART 166—CUSTOMER PROTECTION RULES

69a. The authority citation for part 155 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6*o,* 7, 12a, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

69b. Revise paragraph (a) introductory text and paragraph (b) of § 166.2 to read as follows:

§ 166.2 Authorization to trade.

* * * * *

(a) With respect to a commodity interest as defined in any paragraph of the commodity interest definition in § 1.3(yy) of this chapter, specifically authorized the futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies—

* * * * *

(b) With respect to a commodity interest as defined in paragraph (1) or (2) of the commodity interest definition in § 1.3(yy) of this chapter, authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; *Provided, however,* That if any such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

70. Revise paragraph (a)(2) of § 166.5 to read as follows:

§ 166.5 Dispute settlement procedures.

(a) * * *

(2) The term *customer* as used in this section includes any person for or on behalf of whom a member of a designated contract market, or a participant transacting on or through such designated contract market, effects a transaction on such contract market, except another member of or participant in such designated contract market. *Provided, however,* a person who is an "eligible contract participant" as defined in section 1a(18) of the Act shall not be

deemed to be a customer within the meaning of this section.

* * * * *

Issued in Washington, DC on April 27, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Adaptation of Regulations To Incorporate Swaps—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Chilton and O'Malia voted in the affirmative; Commissioner Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking to adapt existing CFTC regulations to the new requirements of the Dodd-Frank Act. The Act expanded the scope of the Commodity Exchange Act to include swaps. In addition to rulemakings implementing specific provisions of the Act, conforming changes across the Commission's existing regulations are needed to incorporate that expanded scope. Specifically, this proposed rulemaking would update the definitions of futures commission merchant (FCM) and introducing broker (IB) to fulfill the Dodd-Frank Act's requirement to permit those entities to trade swaps on behalf of their customers. The proposal also would add swap execution facilities (SEFs) to the list of CFTC-regulated trading venues. The proposal includes recordkeeping requirements for FCMs, IBs and SEFs to ensure that similar records are kept for swaps as are currently kept for futures, among other protections that already exist in the futures markets. The rules for FCMs with regard to allocations of bunched orders for swaps will be consistent with those rules for futures.

[FR Doc. 2011–12270 Filed 6–6–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Tuesday,

No. 109 June 7, 2011

Part IV

The President

Memorandum of May 31, 2011—Delegation of Authority to Appoint Commissioned Officers of the Ready Reserve Corps of the Public Health Service

Proclamation 8688—National Oceans Month, 2011

Federal Register
Vol. 76, No. 109
Tuesday, June 7, 2011

Presidential Documents

Title 3—

The President

Memorandum of May 31, 2011

Delegation of Authority to Appoint Commissioned Officers of the Ready Reserve Corps of the Public Health Service

Memorandum for the Secretary of Health and Human Services

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 203 of the Public Health Service Act, as amended by Public Law 111–148, to appoint commissioned officers of the Ready Reserve Corps of the Public Health Service. Commissions issued under this delegation of authority may not be for a term longer than 6 months. Officers appointed pursuant to this delegation may not be appointed to the Ready Reserve Corps of the Public Health Service for a term greater than 6 months other than by the President or to the Regular Corps of the Public Health Service other than by the President with the advice and consent of the Senate. This authority may not be redelegated.

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

THE WHITE HOUSE,
Washington, May 31, 2011

[FR Doc. 2011–14236
Filed 6–6–11; 11:15 am]
Billing code 4150–42–P

Presidential Documents

Proclamation 8688 of June 2, 2011

National Oceans Month, 2011

By the President of the United States of America

A Proclamation

During National Oceans Month, we celebrate the value of our oceans to American life and recognize the critical role they continue to play in our economic progress, national security, and natural heritage. Waterborne commerce, sustainable commercial fisheries, recreational fishing, boating, tourism, and energy production are all able to contribute to job growth and strengthen our economy because of the bounty of our oceans, coasts, and Great Lakes.

Last year, I signed an Executive Order directing my Administration to implement our Nation's first comprehensive *National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes*. This policy makes more effective use of Federal resources by addressing the most critical issues facing our oceans. It establishes a new approach to bringing together Federal, State, local, and tribal governments and all of the ocean's users—from recreational and commercial fishermen, boaters, and industry, to environmental groups, scientists, and the public—to better plan for, manage, and sustain the myriad human uses that healthy oceans, coasts, and the Great Lakes support.

One year after the devastating BP Deepwater Horizon oil spill in the Gulf of Mexico, we remain committed to the full environmental and economic recovery of the region. My Administration is assessing and mitigating the damage that was caused by this tragedy, and restoring and strengthening the Gulf Coast and its communities. These efforts remind us of the responsibility we all share for our oceans and coasts, and the strong connection between the health of our natural resources and that of our communities and economy. While we embrace our oceans as crucial catalysts for trade, bountiful sources of food, and frontiers for renewable energy, we must also recommit to ensuring their safety and sustainability, and to being vigilant guardians of our coastal communities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2011 as National Oceans Month. I call upon Americans to take action to protect, conserve, and restore our oceans, coasts, and Great Lakes.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of June, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–14237
Filed 6–6–11; 11:15 am]
Billing code 3195–W1–P

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S. 990/P.L. 112–14

PATRIOT Sunsets Extension Act of 2011 (May 26, 2011; 125 Stat. 216)

H.R. 793/P.L. 112–15

To designate the facility of the United States Postal Service located at 12781 Sir Francis Drake Boulevard in Inverness, California, as the "Specialist Jake Robert Velloza Post Office". (May 31, 2011; 125 Stat. 217)

H.R. 1893/P.L. 112–16

Airport and Airway Extension Act of 2011, Part II (May 31, 2011; 125 Stat. 218)

S. 1082/P.L. 112–17

Small Business Additional Temporary Extension Act of 2011 (June 1, 2011; 125 Stat. 221)

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